## CITY OF NEWPORT BEACH PLANNING COMMISSION AGENDA

CITY COUNCIL CHAMBERS - 3300 NEWPORT BOULEVARD WEDNESDAY, APRIL 3, 2013 REGULAR MEETING - 6:30 p.m.

MICHAEL TOERGE Chair

BRADLEY HILLGREN Vice Chair FRED AMERI Secretary

TIM BROWN
KORY KRAMER
JAY MYERS
LARRY TUCKER

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

KIMBERLY BRANDT, Community Development Director
BRENDA WISNESKI, Deputy Community
Development Director

**LEONIE MULVIHILL, Assistant City Attorney** 

**TONY BRINE, City Traffic Engineer** 

**MARLENE BURNS, Administrative Assistant** 

### NOTICE TO THE PUBLIC

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. The agendas, minutes, and staff reports are available on the City's web site at: <a href="http://www.newportbeachca.gov">http://www.newportbeachca.gov</a> and for public inspection in the Community Development Department, Planning Division located at 3300 Newport Boulevard, during normal business hours. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person. All testimony given before the Planning Commission is recorded.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant of this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or lbrown@newportbeachca.gov).

**APPEAL PERIOD:** Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

### NEWPORT BEACH PLANNING COMMISSION AGENDA CITY COUNCIL CHAMBERS – 3300 NEWPORT BOULEVARD WEDNESDAY, APRIL 3, 2013 REGULAR MEETING – 6:30 p.m.

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL

### IV. PUBLIC COMMENTS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. (Red light signifies when three (3) minutes are up; yellow light signifies that the speaker has one (1) minute left for summation.) Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

### V. REQUEST FOR CONTINUANCES

### VI. CONSENT ITEMS

### ITEM NO. 1 MINUTES OF MARCH 21, 2013

Recommended Action: Approve and file

### VII. PUBLIC HEARING ITEMS

Speakers must limit comments to three (3) minutes on all items. (Red light signifies when three (3) minutes are up; yellow light signifies that the speaker has one (1) minute left for summation.) Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

# ITEM NO. 2 NEWPORT NORTH CENTER MONUMENT SIGNS APPEAL (PA2012-168) Site Location: 1200 Bison Avenue

### Summary:

An appeal of the Zoning Administrator's decision to approve a modification permit to allow alteration of an existing monument sign, and to allow the addition of a second multi-tenant identification monument sign. The existing monument sign would increase in area from 72 to 81 square feet and increase in height from approximately 8 feet to 9 feet; the new monument sign would measure 56 square feet in area and 6 feet 6 inches in height.

### **CEQA** Compliance:

The project qualifies for Class 11 (Accessory Structures) categorical exemption, Section 15311 of the California Environmental Quality Act. This class exempts construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to on-premise signs.

### **Recommended Action:**

- 1. Conduct a de novo public hearing; and
- 2. Adopt Resolution No. \_\_\_\_\_, denying the appeal, upholding and affirming the decision of the Zoning Administrator and approving Modification Permit No. MD2012-016 with the attached Findings and Conditions.

### ITEM NO. 3 441 OLD NEWPORT MEDICAL OFFICE BUILDING (PA2011-056)

Site Location: 441 Old Newport Boulevard

### **Summary:**

The applicant requests approval of a Conditional Use Permit to allow off-site parking. The applicant has secured the ability to improve the adjacent property at 445 Old Newport Boulevard to accommodate a total of 13 parking spaces during the day. Combined, the proposed on-site and off-site parking spaces will provide the minimum parking spaces required by the Zoning Code for medical uses. After finalizing the staff report, it was determined that the public notice for this item referenced an incorrect hearing date. Therefore, the item will be re-noticed for the Planning Commission's action on April 18, 2013.

### **CEQA** Compliance:

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines, Class 1 (Existing Facilities). The medical use would occupy an existing general office building and utilize existing parking lots that are being renovated with no or neglibile expansion of use.

### **Recommended Action:**

1. Continue the item to April 18, 2013.

### ITEM NO. 4 KNIGHT RESIDENCE (PA2013-044) AND OU RESIDENCE (PA2013-043)

Site Location: 312 Hazel Drive and 316 Hazel Drive

### **Summary:**

Appeals of the Community Development Director's determination of the canyon development stringlines pursuant to General Plan Policy NR23.6 (Canyon Development Standards) and Coastal Land Use Plan Policy 4.4.3-18 for two single-family residential properties adjacent to Buck Gully.

### **CEQA** Compliance:

The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). The Class 3 exemption includes the construction of one single-family residence. The subject appeals involve the potential for the future redevelopment of two existing single-family residences on two individual properties (one unit per property). The existing structures may be partially or fully demolished. Therefore, the proposed project qualifies for an exemption under Class 3.

### **Recommended Action:**

- Conduct a de novo public meeting;
- Adopt Resolution No. \_\_\_ modifying the decision of the Community Development Director and establishing canyon development stringlines for principal and accessory structures at 312 Hazel Drive pursuant to General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18; and
- 3. Adopt Resolution No. \_\_\_ modifying the decision of the Community Development Director and establishing canyon development stringlines for principal and accessory structures at 316 Hazel Drive pursuant to General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18.

### VIII. STAFF AND COMMISSIONER ITEMS

- ITEM NO. 5 MOTION FOR RECONSIDERATION
- ITEM NO. 6 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

ITEM NO. 7 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT

### ITEM NO. 8 REQUESTS FOR EXCUSED ABSENCES

### IX. <u>ADJOURNMENT</u>

Correspondence
Item No. 0.0d
Public Comments
April 3, 2013

## Comments on April 3, 2013 PC Agenda Items

The following comments on items on the April 3, 2013 Newport Beach Planning Commission agenda are submitted by: Jim Mosher ( <u>jimmosher@yahoo.com</u> ), 2210 Private Road, Newport Beach 92660 (949-548-6229)

### Item No. 1 Minutes Of March 21, 2013

The following corrections to the draft minutes are suggested:

### Page 1

paragraph 2 under Public Comments: "He addressed projects within the Coastal Zone noting
that when they are exempt from needing to apply for a Coastal Development Permit and
referenced written comments relative to modification of lot boundaries modifications
involving the Subdivision Map Act, noting that per a recent California Supreme Court
opinion they always require a Coastal Development Permit."

### Page 3

• paragraph 4 under Item 3: "He referenced Section 4.18 418 of the City Charter ..."

Note: as the minutes correctly report, with regard to Item 3 (code amendment revising mixed use minimum residential density standard): "Discussion followed regarding an existing procedure for rounding numbers within the Zoning Code."

I continue to think the proposed code amendment should include language explaining exactly how the allowable range of residential units is to be calculated using the numbers provided in the tables. NBMC Section 20.12.020 ("Rules of Interpretation") turns out to provide clear guidance on how the *maximum* allowable number of residential units is to be determined, but none on how the required *minimum* number is to be rounded. This is because Subsection C.1 states that a fractional residential unit result should be *rounded down* when calculating *maximum allowed* units and Subsection C.2 says that all other fractional results should be *rounded up* (unless otherwise specified), but Subsection C.2 says it is not to be used for residential density calculations.

Since the amendment was proposed to deal with situations in which the minimum required unit count was too high to be implemented, I would guess the intention is for the result of that calculation to be rounded down, but that needs to be made clear to avoid unnecessary disputes.

Since the numbers used in the calculations are referred to as "lot sizes" (rather than floor areas) it is also unclear from the proposed amendment if there is a minimum floor area that has to be devoted to each required residential unit in these mixed-use developments, or if that is covered elsewhere in the NBMC.

## Item No. 2 Newport North Center Monument Signs Appeal (PA2012-168)

I agree with the objections raised by Councilmember Daigle in her memorandum of appeal, and would go beyond that to say that even if the project had merit, I do not think a modification permit is the proper mechanism for granting deviations from the development standards imposed by PC text, such as the North Ford Planned Community District Regulations (PC-05, of which the subject property is Area 3).

Like Councilmember Daigle, I find unfathomable the Planning Division's reasoning that deviations from PC text standards can be granted on the basis that they are "consistent and comparable with [development at] other commercial properties located citywide" (Section 3 of draft resolution, proposed Fact in Support of Finding A.1). To me, that defeats the purpose of the PC text, which, as I understand it, is to impose development standards unique to a particular project. That uniqueness is completely lost if anything similar to development elsewhere in the City can be approved.

The idea that deviations from the PC standards can be granted willy-nilly through modification permits also defeats the intent of a "Planned Community." To me, the proper mechanism, and the only way to maintain a coherent vision governing future development in the District, is to correct the PC text to allow the proposed development (if such development is deemed suitable).

And that principle seems already to be embodied in <u>Title 20</u> of the Newport Beach Municipal Code. Chapter 20.52 says the purpose of Modification Permits is to "is to provide relief from **specified development standards of this Zoning Code**" (Subsection 20.52.050.A), not to provide relief from separately adopted and voluntarily agreed to PC text standards. PC development standards are covered by Chapter 20.56, which provides its own mechanism for modifications: in the absence of other directions in the PC text, that mechanism is by amendment of the Development Plan pursuant to Subsection 20.56.050.E. The procedure is not difficult, and such amendments can be made "as often as deemed necessary by the Council," but (per Table 5-1 in Chapter 20.50) the changes are reviewed by the Planning Commission and approved by Council, not by the Zoning Administrator.

The presumed reason for this amendment mechanism, different from the modification permits used in non-planned community areas, is to maintain a "plan" whereby the same standards will be applied uniformly to all future development within the District.

In short, having agreed to be constrained by a particular PC text, I think the landowner/developer should be required to stay strictly within those constraints, subject only to future amendment of the PC text; although reviewing the North Ford Planned Community District Regulations it is evident to me that if The Irvine Company wanted to be a bad neighbor, the existing regulations would allow their tenants to install signage considerably more offensive than the current proposal (namely, restaurant pole signs, a 20-foot tall lighted multi-tenant directory sign, and lighted ground signs for each tenant facing each street frontage in lieu of a wall sign).

### Is an amendment to the North Ford PC text desirable?

Like Councilmember Daigle, I am unable to see the rationale for wanting a new multi-tenant monument sign at the corner of Camelback and Bison, in addition to the one allowed by the PC text.

• The shopping center is probably used primarily by local residents, for whom the sign serves no obvious purpose.

- The new sign would announce only three of the tenant businesses, so those unfamiliar with the area may well not be able to tell if they have found the center they are looking for, or not.
- Motorists travelling eastbound on Bison will probably not see the sign until it is too late to do anything about it.
  - Although nothing on the sign warns motorists of that fact, once one has passed
     Camelback, there is no way to get into the center (access from Bison is blocked by the median and U-turns are prohibited at the signal where Bison crosses MacArthur).
  - For the few who know they need to turn, the sign may encourage unsafe last minute panic lefts onto Camelback.

As I argued at the Zoning Administrator hearing, what the center really needs is a simple sign with an arrow in the Bison median west of Camelback altering motorists that they need to turn left to access the Post Office, shopping center, etc. I also have difficulty understanding the intended purpose of having the names of just three tenants announced to travelers on southbound MacArthur, a different set of three announced to travelers on northbound MacArthur, and yet another set of three to travelers on eastbound Bison.

As to the proposed new sign location on the northeast corner of Bison and Camelback, as I also tried to argue at the Zoning Administrator hearing, the real eyesore currently there is the large above ground traffic signal control box (see photos on handwritten page 34 of the staff report). If a new monument sign is really needed, the City might consider negotiating to have that relocated downslope to a less prominent position on The Irvine Company property.

## Applicant's Letter in Response to the Appeal (Attachment PC 8)

The letter from Shawna Schaffner of CAA Planning, contains a number of confusing mis-references to the Newport Beach Municipal Code (for example, on page 2 of 4, the references to Zoning Code "Section 20.42.010 E" and "20.41.010 E" are actually to 20.42.020 E), but more importantly it purposefully distorts and mischaracterizes the language of the current North Ford PC text.

The claim that "the PC does not include monument signage" (page 2 of 4) is at best disingenuous: the PC text simply uses the older term "ground sign." That term is used, but not defined, in the 2010 Zoning Code, and the two are apparently synonymous (see, for example, Subsections 20.90.110 D 3 b & c).

The letter is similarly disingenuous in suggesting the only real issue was permitting a sign 6" taller than allowed by the Zoning Code for non-planned districts. The real issue is that the PC text very clearly allows only one muli-tenant sign and The Irvine Company wants two. It might also be noted that the six foot height standard being referred to by Ms. Schaffner is apparently that given in Table 3-16 of Section 20.42.070, which also explicitly says that even in non-planned districts, only one freestanding sign is permitted per site.

### **Special Lighting Analysis by Linwood Engineering Associates**

My preceding comments are only those of an interested member of the public, and although I am not a certified lighting engineer, I do have a both a bachelor's degree, with honors, and a doctorate, both in physics, from Caltech, and have professional experience in optical engineering. I therefore feel qualified to comment on the Special Lighting Analysis offered by Ms. Schaffner's consultant.

The first thing that struck me about the report was the statement on page 1 that "This dramatic fall off is due to the Inverse Square Law, which states that light levels decrease exponentially with distance." This suggests a profound ignorance of the fundamentals of the field on the part of the consultant. First, the inverse square law does not apply strictly to extended sources such as an illuminated sign, and second, an inverse square relationship would never be described as "exponential" (which is a completely different mathematical concept).

Next, the following pages refer to, and measure, the "horizontal illuminance," that is, the light energy per unit area detected by a light meter held horizontally, with the detector facing upwards toward the sky. This may be relevant to code regulations, but it does not address the neighbor's fundamental complaint, namely the light energy impinging on a bedroom window, that is on a *vertical* surface oriented towards the sign.

Finally, although the neighbors expressed their concern in terms of light energy coming into their bedroom windows (that is, would there be enough light to read a book by?), the Commission should be aware this is completely distinct from the concept of how bright the sign looks, and how distracting it is, when looking out the window at it. I have a similar situation looking across the Back Bay at Fletcher Jones, and on occasion at the playing field lights at UCI, and similar complaints have been raised about the brightly illuminated "sail" at the new Civic Center. Although the added light energy from these small distant sources is negligible at a great distance (one can't read a book by them), they are just as bright in the visual field, and just as distracting, as if one were a foot away.

### **Draft Resolution of Approval (Attachment PC 1)**

Ms. Schaffner's deceptive reasoning has morphed into the statement on page 4 of the staff report that "The North Ford PC does not prohibit more than one identification ground sign from being incorporated into a single sign." That is at best wishful thinking assuming such a sign would be regarded as a "multi-tenant" sign, as I think any reasonable person would have to conclude it is. North Ford PC Area 3 Regulation E.3 on page 27 of the PC text (reproduced on page 41 of the 62 page staff report PDF) clearly calls out the specifications for a **single** multi-tenant directory sign, and the possibility this single multi-tenant sign might be a ground/monument sign is clearly implied by the clause in Regulation E.1.a exempting it from certain standards applicable to the allowed individual tenant ground signs.

As to the draft Resolution of Approval itself:

Section 1.3: This recital includes a typographical error in: "where the North Ford Planned Community District Regulations restrict the property to a freestanding signs for project identification only." This was evidently intended to read either "to a freestanding sign" or "to freestanding signs." I am also unable to find anything in the PC text supporting the statement that the freestanding signs are "for project identification only." On the contrary, they seem to be for tenant identification. The following sentence about a four foot height limit in the PC text is confusing at best, since that limit applies to individual tenant "identification ground signs" and the single allowed "Multi-Tenant Directory Sign" is explicitly exempted from that requirement and given a 20 foot height limit instead.

Section 1.4: Contains an additional typographical error: "The Zoning Administrator was conditionally approved the application" should read "The Zoning Administrator conditionally approved the application."

Section 3: I don't believe the italicized statement at the start of the section is correct, nor do I believe a Modification Permit is the proper avenue to legitimize the desired development contrary to the existing PC text.

Section 3.A: "Facts in Support of Finding" 1-3 are essentially saying the PC Development Regulations are irrelevant, and anything acceptable in other shopping centers in Newport Beach is acceptable here. For the reasons stated above, I am unable to accept that argument: it would render the PC text pointless.

Section 3.B: The unique circumstances detailed in this section should already be reflected in the PC text. If they are not, the PC text needs to be corrected.

Section 3.B.4 is ungrammatical.

Section 3.C is based on what I believe to be the mistaken belief that it is the Zoning Code that is being applied. The proposed development is constrained not by the Zoning Code, but by the North Ford Planned Community District Regulations.

Section E.4 confusingly makes it sound like the expanded MacArthur sign will advertise only three tenants ("two only, multi-tenant project signs ... no more than three tenants per sign"). I believe it will advertise six (three on each side).

## Item No. 3 441 Old Newport Medical Office Building (PA2011-056)

It is refreshing to see that on March 26, 2013, the City Council decided to send this matter back to the Planning Commission, having been told the "appeal" had been replaced with an application different from that on which the Commission had originally voted 7:0 to reject.

It is also refreshing to see staff being so scrupulous about proper noticing. In this case, the date was published, at least in the Daily Pilot, as "Thursday, April 3" leaving readers uncertain if it meant Thursday (April 4) or Wednesday (April 3). Again, it is good staff caught this (I did not), but another thing I found strange about the noticing is that I happened to be passing by the property on Friday, March 22, and noticed the property posted with *two* signs, one announcing the March 26 City Council hearing, and another announcing, with considerable certainty ("a public hearing will be conducted" rather than "a public hearing may be conducted"), the April 3 Planning Commission hearing. I found this strange because at that point the Council had not made the decision to ask the Commission to hear the matter. Although there is probably nothing illegal about announcing a hearing that may never happen, this certainly gives the impression staff assumes the outcome of City hearings to be foreordained. Like "Dewey defeats Truman," that does not seem to me to create a good public perception.

Regarding the "new" application being referred back to the Planning Commission for reconsideration, I must say that based on a quick reading of the staff report I am unable to immediately grasp how the present proposal differs in any substantial way from the previously rejected one. I would suggest two alternatives that *would* make the proposal different: (1) develop the two properties jointly with permanent internal vehicular access between the two; or (2) allow the applicant's building to be occupied only to the extent permissible based on the available on-site parking. Option (2) could be

realized by requiring the applicant to render some of the currently built office space "non-habitable," as has been done with Irvine Company properties in Newport Center, with an opportunity to revisit the condition if experience shows that under those circumstances the lot has sufficient capacity to support opening additional office space.

## Item No. 4 Knight (PA2013-044) and Ou (PA2013-043) Residences

An extremely minor point about this appeal is that General Plan Policy NR 23.6 and the identical Coastal Land Use Plan Policy 4.4.3-18 contain the misspelling "*principle* structures" where "*principal* structures" was intended. This creeps into the staff report and draft resolutions.

A much more fundamental concern is how the objective of General Plan Policy NR 23.1, to "site buildings to minimize alteration of the site's natural topography and preserve the features as a visual resource" can be achieved by drawing stringlines on aerial photos, since the topography (the vertical variations in height) is not directly visible on those photos.

Of the many "Predominant Line of Existing Development" (PLOED) examples shown in the staff report, the only one that I think, to the average person, could be said to respect the topography is the dashed green line on page 34 of the 160 page staff report PDF, where a former Planning Director followed the 54 foot height contour of the canyon slope. I believe this idea that what we are seeking to limit is the creep of development down the slope (vertically) as seen from ground level, more so than horizontally out from the canyon edge, is the one favored by the California Coastal Commission (see, for instance, their debate over the Evensen residence on the cliff face below Ocean Boulevard); and I am concerned that the Planning Commission's recent decision to the contrary in the case of the Wardy residence on Irvine Terrace (setting a horizontal limit of development as seen from above, irrespective of how far down the slope it goes) may jeopardize the City's ability to certify its Coastal Implementation Plan.

I don't think the references to "stringlines" in the GP/CLUP resolve which of these interpretations of PLOED is intended: the distinction is a matter of whether the stringline is intended to be projected vertically down onto the landform (creating a horizontal limit) or projected horizontally (creating a vertical limit) or some combination of two (limiting development *both* horizontally *and* vertically).

My own view is that to preserve landforms the intention is to limit development both horizontally and vertically, however in addition to failing to be clear as to whether the projection is horizontal or vertical, the stringline standard "where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property" as currently written in the GP/CLUP does not seem to have been well thought out. Is it really intended to be rigidly applied when one or both of the adjacent properties is vacant? Or occupied only by a small outbuilding set well back from the canyon edge, even though that is not the predominant form of development in the area?

The proposed solution of applying the GP/CLUP standard with equal rigidity, but extending the stringline over multiple properties introduces still more flaws: in cases where the arc of development is concave facing the canyon as viewed from above, as it is here, each new approval will move the PLOED forward into the canyon, and the process will be continual because that approval will set a new, looser standard for the next round of development. Likewise, if the arc of development is convex, the stringlines drawn over multiple properties will continually pull the PLOED back away from

the canyon. In addition, drawing the line over multiple properties is contrary to the clear directive in the General Plan, and although modifications to the Zoning Code can be granted, alterations of the General Plan would seem more difficult.

### Comments on Draft Resolution for 312 Hazel Drive (Attachment PC 1)

Section 2: In my view the claim of a categorical exemption from CEQA is erroneous since there is clearly a possibility of impacting the sensitive areas downslope, as acknowledged by Fact in Support of Finding 3.C-2. I do not believe, for example, that it is the intent of CEQA that a single family home could be built in such a way as to destroy ESHA or an archeological resource, or pollute a river, just because it is a single family home.

Section 3: I suspect this should be titled "FINDINGS" rather than "REQUIRED FINDINGS." If they are "required" there should be some reference to the law that requires them.

Section 3.B: "The development stringlines for principle principal structures and accessory improvements, as depicted in Exhibit A, are consistent with General Plan Policy NR23.6 and CLUP Policy 4.4.3-18." This statement would not seem to be factually correct, for the GP/CLUP Policies do not allow drawing the stringline over multiple properties.

Section 3.B-1: "The principal structure stringline is drawn between the nearest adjacent foundation of the existing principal structures at structures at 308 and 320 Hazel Drive. The accessory improvement stringline is drawn between the existing decks located on adjacent properties at 308 and 320 Hazel Drive."

Section 3.C-1: "The canyon development stringlines follow the topographic contours of Buck Gully ..." This statement does not appear to be factually correct. As illustrated in Exhibit A, the 70 foot contour matches the green string line at the two ends, but deviates from it very significantly in the middle. In fact, in the middle, as seen from overhead the 70 foot contour is much closer to the blue stringline than to the green one.

### Comments on Draft Resolution for 316 Hazel Drive (Attachment PC 2)

My comments on this resolution are essentially the same as on the previous one.

### **Applicability of Categorical Exclusion Order E-77-5**

A final comment: The statement on page 4 of the staff report that "Development of single-family residences on these lots does not require Coastal Development Permits provided the development is consistent with Categorical Exclusion Order E-77-5" is true, however under the terms of that order, eligibility is contingent upon the development being consistent not with the current Zoning Code, but rather with the Zoning Code that was in effect on August 25, 1977 when the Exclusion order was issued. I do not know if that condition is met here, or not.

### NEWPORT BEACH PLANNING COMMISSION MINUTES Council Chambers – 3300 Newport Boulevard Thursday, March 21, 2013 REGULAR MEETING 6:30 p.m.

- I. CALL TO ORDER The meeting was called to order at 6:30 p.m.
- II. PLEDGE OF ALLEGIANCE Chair Toerge

### III. ROLL CALL

PRESENT: Ameri, Hillgren, Toerge, and Tucker

ABSENT (Excused): Brown, Kramer, and Myers

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Tony Brine, City Traffic Engineer; Marlene Burns, Administrative Assistant; Benjamin Zdeba, Assistant Planner; and Patrick Alford, Planning Manager

### IV. PUBLIC COMMENTS

Chair Toerge invited those interested in addressing the Planning Commission to do so at this time.

Jim Mosher referenced a previous meeting where a presentation was given regarding the City's compliance with the General Plan. He addressed the requirement that any significant proposed development should be subject to a specific fiscal impact analysis using a model within the 2006 General Plan. He referenced the Uptown Newport project, stated that a specific fiscal analysis was not provided for the development and wondered regarding its existence. He addressed projects within the Coastal Zone noting that they are exempt from needing to apply for a Coastal Development Permit and referenced written comments relative to modification of lot boundaries, noting that they require a Coastal Development Permit.

### V. REQUEST FOR CONTINUANCES

Deputy Community Development Director Brenda Wisneski reported receiving a request from the applicant to continue Item No. 2, related to Breakers Drive lot line adjustment.

James "Buzz" Person, representative for the applicants, reported the need to generate additional information regarding the project costs for the next Planning Commission meeting.

Discussion followed regarding the need for additional information, hearing the item tonight and honoring the applicant's request for a continuance. It was suggested that the Planning Commission conduct the hearing and the applicant can decide if a continuance is needed after hearing the discussion.

### VI. CONSENT ITEMS

### ITEM NO. 1 MINUTES OF MARCH 7, 2013

Chair Toerge noted receipt of additional comments from Jim Mosher regarding the minutes.

**Motion** made by Vice Chair Hillgren and seconded by Chair Toerge and carried (3 - 1 - 3), to approve the minutes of the Planning Commission meeting of the March 7, 2013, Regular meeting, as amended.

AYES: Ameri, Hillgren, and Toerge

NOES: None ABSTENTIONS: Tucker

ABSENT: Brown, Kramer, and Myers

### VII. PUBLIC HEARING ITEMS

### ITEM NO. 2 BREAKERS DRIVE LOT LINE ADJUSTMENT/VARIANCE (PA2012-173)

Site Location: 3124/3126 and 3130/3140 Breakers Drive

Assistant Planner Benjamin Zdeba presented details of the report addressing location, lot sizes, background, setbacks, interior lot lines and existing conditions. He noted agreement by the neighbors for a lot line adjustment for increased compliance with the Building Code and stated that there is no construction proposed as part of the application. He presented details of the variance, findings of compatibility and recommendations.

In response to an inquiry from the Planning Commission, Mr. Zdeba reported that if either property would be redeveloped in the future, a condition of approval has been included requiring compliance with the provisions of the Zoning Code relative to setbacks. He addressed compliance issues regarding both properties.

Interested parties were invited to address the Planning Commission on this item.

James "Buzz" Person reported that the building was not developed in 2011, but that the final building permit was issued in 2011. He stated that if the properties were to go on the market, there would be a survey and the survey would result in a discrepancy between what is shown on the plans and what is built.

In response to an inquiry from Commissioner Tucker, Mr. Person indicated that he does not believe that the properties are "free and clear". He stated that both of the properties have quite a bit of construction on them and provided a brief history.

Discussion followed regarding possible discrepancies between the Deeds of Trust and the legal descriptions of the parcels.

Jim Mosher noted that moving a line on a map will not change the physical situation of the properties and commented on a similar hearing in the past. He wondered why there is so much concern on the matter and suggested adding conditions to ensure adequate fire access to both properties and stated that it is the Planning Commission's duty to inform the applicant that before finalizing the change, they will need to submit an application for a Coastal Development Permit.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public hearing.

Chair Toerge clarified both property owners were listed on the application, referenced written comments by Mr. Mosher and indicated that there is no change in density proposed, therefore, there is no need to apply for a Coastal Development Permit. He addressed concerns regarding setting a possible precedence and indicated support of the matter.

Commissioner Tucker felt that this is a proper way to handle an unfortunate situation and that the applicants have the right to make their request.

**Motion** made by Commissioner Tucker and seconded by Vice Chair Hillgren and carried (4 - 0 - 3), to adopt a resolution approving Lot Line Adjustment No. LA2012-007 and Variance Permit No. VA2012-007.

AYES: Ameri, Hillgren, Toerge, and Tucker

NOES: None ABSTENTIONS: None

ABSENT: Brown, Kramer, and Myers

Mr. Person indicated withdrawal of the previous request for a continuance.

### ITEM NO. 3 MIXED-USE CODE AMENDMENT (PA2013-020)

Site Location: City of Newport Beach

Planning Manager Patrick Alford presented details of the report including background and direction by the City Council to initiate an amendment that would allow the ability to modify the minimum lot area/density standard. He addressed applicable zoning areas and districts and presented recommendations as stated in the report.

Commissioner Tucker clarified actions needed at this time.

Interested parties were invited to address the Planning Commission on this matter.

Jim Mosher pointed out typographical errors needing correction and opined that the literal form of the amendment is not a valid amendment to the Zoning Code. He referenced Section 4.18 of the City Charter as well as recent changes relative to amending sections or sub-sections in their entirety and commented on the need to clarify the tables within the document.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public hearing.

Discussion followed regarding an existing procedure for rounding numbers within the Zoning Code.

**Motion** made by Commissioner Tucker and seconded by Commissioner Ameri and carried (4 - 0 - 3), to adopt a resolution recommending the City Council approval of Code Amendment CA2013-001.

Commissioner Tucker suggested that going forward staff complete the staff report so that it is consistent with the City Charter requirements.

Assistant City Attorney Mulvihill indicated that the City Attorney's office agrees with his comments.

AYES: Ameri, Hillgren, Toerge, and Tucker

NOES: None ABSTENTIONS: None

ABSENT: Brown, Kramer, and Myers

### VIII. STAFF AND COMMISSIONER ITEMS

### ITEM NO. 4 MOTION FOR RECONSIDERATION - None

### ITEM NO. 5 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Deputy Community Development Director Wisneski reported that the Woody's Wharf appeal was recently heard by Council noting that changes have been made to the project and that staff recommended that the project be brought back to the Planning Commission on the basis of a new design for a cover for the patio area and development of a noise study. The item will be brought before the Planning Commission once the revised plans and noise study have been received.

Additionally, she stated that the Planning Commission should have received a notice for AB 1234, the ethics training scheduled for March 28, 2013, and that it is available on line for those not able to attend. She announced that the next Planning Commission meeting was originally scheduled for April 4, 2013, but that City Hall will be preparing to move to the Civic Center on that date, so the meeting has been moved to April 3, 2013, at 6:30 p.m.

ITEM NO. 6 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT - None

### ITEM NO. 7 REQUESTS FOR EXCUSED ABSENCES - None

### IX. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:10 p.m.

The next regular meeting of the Planning Commission is scheduled for April 3, 2013, at 6:30 p.m.

The agenda for the Regular Meeting was posted on March 15, 2013, at 1:09 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

	Michael Toerge, Chairman		
		_	
•	Fred Ameri, Secretary		

Changes proposed by P. Alford, Planning Manager Additional Materials

Item No. 1a

NEWPORT BEACH PLANNING COMMISSION MINUTES

Draft Minutes 03/21/13 3/21/13

Commissioner Tucker felt that this is a proper way to handle an unfortunate situation and that the applicants have the right to make their request.

**Motion** made by Commissioner Tucker and seconded by Vice Chair Hillgren and carried (4 - 0 - 3), to adopt a resolution approving Lot Line Adjustment No. LA2012-007 and Variance Permit No. VA2012-007.

AYES: Ameri, Hillgren, Toerge, and Tucker

NOES: None ABSTENTIONS: None

ABSENT: Brown, Kramer, and Myers

Mr. Person indicated withdrawal of the previous request for a continuance.

### ITEM NO. 3 MIXED-USE CODE AMENDMENT (PA2013-020)

Site Location: City of Newport Beach

Planning Manager Patrick Alford presented details of the report including background and direction by the City Council to initiate an amendment that would allow the ability to modify the minimum lot area/density standard. He addressed applicable zoning areas and districts and presented recommendations as stated in the report. A revised Exhibit A to the draft resolution was distributed to correct a few typographical errors.

Commissioner Tucker clarified actions needed at this time.

Interested parties were invited to address the Planning Commission on this matter.

Jim Mosher pointed out typographical errors needing correction and opined that the literal form of the amendment is not a valid amendment to the Zoning Code. He referenced Section 4.18 of the City Charter as well as recent changes relative to amending sections or sub-sections in their entirety and commented on the need to clarify the tables within the document.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public hearing.

Discussion followed regarding an existing procedure for rounding numbers within the Zoning Code.

**Motion** made by Commissioner Tucker and seconded by Commissioner Ameri and carried (4 - 0 - 3), to adopt a resolution recommending the City Council approval of Code Amendment CA2013-001.

Commissioner Tucker suggested that going forward; staff redoes the paperwork so that it is consistent with the City Charter requirements.

Assistant City Attorney Mulvihill indicated that Commissioner Tucker's suggestions can be incorporated into the ordinance and noted that the City Attorney's office agrees with his comments.

AYES: Ameri, Hillgren, Toerge, and Tucker

NOES: None ABSTENTIONS: None

ABSENT: Brown, Kramer, and Myers

### VIII. STAFF AND COMMISSIONER ITEMS

NEWPORT BEACH PLANNING COMMISSION MINUTES

Changes la minutes per Leonie Multihill, assistant 21/13

April 3, 2013

NEWPORT BEACH PLANNING COMMISSION MINUT

Council Chambers – 3300 Newport Boulevard Thursday, March 21, 2013 REGULAR MEETING

6:30 p.m.

Additional Materials Item No. 1b Draft Minutes 03/21/13

- CALL TO ORDER The meeting was called to order at 6:30 p.m.
- PLEDGE OF ALLEGIANCE Chair Toerge 11.

#### III. ROLL CALL

PRESENT:

Ameri, Hillgren, Toerge, and Tucker

ABSENT (Excused): Brown, Kramer, and Myers

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Tony Brine, City Traffic Engineer; Marlene Burns, Administrative Assistant; Benjamin Zdeba, Assistant Planner; and Patrick Alford, Planning Manager

#### IV. PUBLIC COMMENTS

Chair Toerge invited those interested in addressing the Planning Commission to do so at this time.

Jim Mosher referenced a previous meeting where a presentation was given regarding the City's compliance with the General Plan. He addressed the requirement that any significant proposed development should be subject to a specific fiscal impact analysis using a model within the 2006 General Plan. He referenced the Uptown Newport project, stated that a specific fiscal analysis was not provided for the development and wondered regarding its existence. He addressed projects within the Coastal Zone noting that they are exempt from needing to apply for a Coastal Development Permit and referenced written comments relative to modification of lot boundaries, noting that they require a Coastal Development Permit.\

### REQUEST FOR CONTINUANCES

Deputy Community Development Director Brenda Wisneski reported receiving a request from the applicant to continue Item No. 2, related to Breakers Drive lot line adjustment.

James "Buzz" Person, representative for the applicants, reported the need to generate additional information regarding the project costs for the next Planning Commission meeting.

Discussion followed regarding the need for additional information, hearing the item tonight and honoring the applicant's request for a continuance. It was suggested that the Planning Commission conduct the hearing and the applicant can decide if a continuance is needed after hearing the discussion.

#### VI. CONSENT ITEMS

#### ITEM NO. 1 MINUTES OF MARCH 7, 2013

Chair Toerge noted receipt of additional comments from Jim Mosher regarding the minutes.

# CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

April 3, 2013 Agenda Item 2

**SUBJECT:** Newport North Center Monument Signs Appeal - (PA2012-168)

1200 Bison Avenue

Modification Permit No. MD2012-016

**APPLICANT:** Irvine Company – John Murphy

**PLANNER:** Patrick Alford, Planning Manager

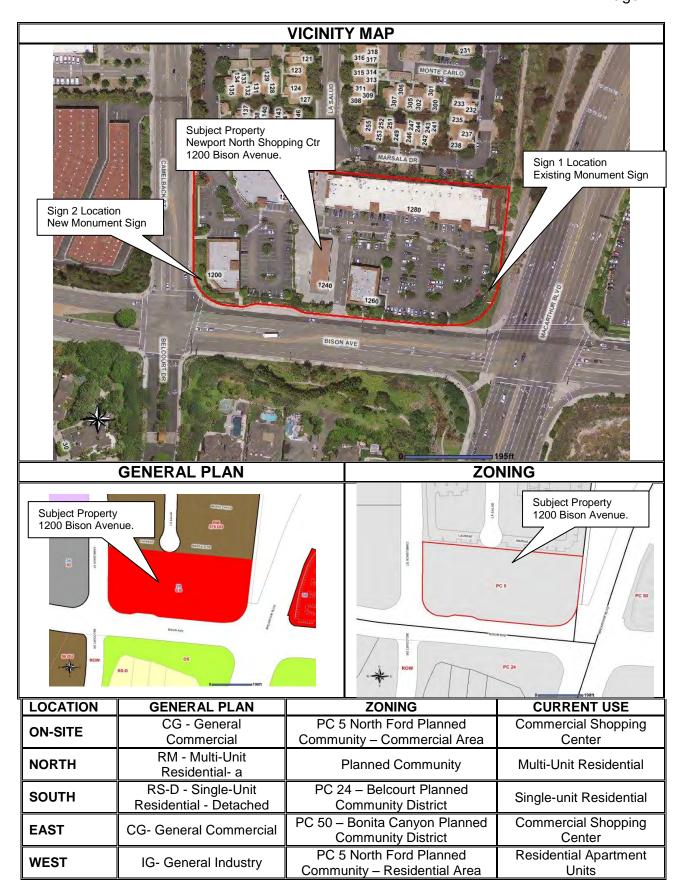
(949) 644-3235, palford@ newportbeachca.gov

### **PROJECT SUMMARY**

An appeal of the Zoning Administrator's decision to approve a modification permit to allow alteration of an existing monument sign, and to allow the addition of a second multi-tenant identification monument sign. The existing monument sign would increase in area from 72 to 81 square feet and increase in height from approximately 8 feet to 9 feet; the new monument sign would measure 56 square feet in area and 6 feet 6 inches in height.

### **RECOMMENDATION**

- 1) Conduct a de novo public hearing; and
- 2) Adopt Resolution No. \_\_\_\_, denying the appeal, upholding and affirming the decision of the Zoning Administrator and approving Modification Permit No. MD2012-016 with the attached Findings and Conditions (Attachment No. PC 1).



### INTRODUCTION

### **Project Setting**

The project site is the Newport North Shopping Center, which is located on the north side of Bison Avenue and lies between MacArthur Boulevard and Camelback Street. The center is occupied by a gasoline service station, restaurants, retail and service retail uses. To the south, across Bison Avenue, is the Belcourt Terrace Residential Community; to the east, across MacArthur Boulevard, is the Bluffs Shopping Center; to the north is the North Newport Apartments Complex; and to the west is a Mini-U-Storage facility.

### Project Description/Action by the Zoning Administrator

On January 24, 2013, the Zoning Administrator approved Modification Permit No 2012-016, to allow alteration of the existing multi-tenant monument sign to allow an increase in area from 72 to 81 square feet and increase in height from 8 feet to approximately 9 feet; and a new monument sign was approved to measure 56 square feet and 6 feet 6 inches tall (Attachment PC 2, Project Plans). The Zoning Administrator staff report and minutes of the hearing are attached (Attachments PC 3 and PC 4, respectively).

### The Appeal

On February 6, 2013, Council Member Leslie Daigle appealed the decision of the Zoning Administrator to the Planning Commission (Attachment PC 5). The appeal identified issues related to the authority of the Zoning Administrator to apply the provisions of the Zoning Code; the impact of the multi-tenant monument sign illumination on the neighboring residential community; the multi-tenant monument sign as not permitted by the North Ford Planned Community District (North Ford PC) Regulations (Attachment PC 6), and neighborhood compatibility. While the concerns are presented generally, the appeal letter indicates the crux of the concerns is the illumination and content of the multi-tenant sign located at the corner of Camelback and Bison.

### Background

The North Ford PC contains standards for signs that have not changed since they were first adopted in 1968.

On March 3, 2004, the Modifications Committee approved Modification Permit No. 2004-009 to allow a new internally illuminated project identification monument sign for the center.

On August 10, 2011, the Zoning Administrator approved Modification Permit No. 2011-011, to allow a new monument sign as a multi-tenant identification sign.

### **DISCUSSION**

### **Analysis**

### Zoning Authority

The appellant is challenging the authority of the Zoning Administrator to approve the subject signs. Specifically, the appellant argues that:

- The Zoning Administrator inappropriately used Zoning Code sign standards instead of those of the North Ford PC; and
- The proposed illuminated multi-tenant sign is not permitted by the North Ford PC.

Section II, General Note No. 7, of the North Ford PC states, "Except as otherwise noted in this ordinance, the requirements of the Newport Beach Zoning Code shall apply. Additionally, Subsection 20.52.050.B.3.f of the Zoning Code allows modifications to increase the allowed height, number and area of signs. Finally, Section 20.42.020.E of the Zoning Code provides that if a planned community development plan does not provide regulations for a particular sign type or situation, the requirements of Chapter 20.42 (Sign Standards) shall prevail.

It is staff's interpretation that the sign standards of the Zoning Code can be applied in cases where the North Ford PC is silent or to otherwise request deviation from its standards. It was under that authority that the actions of the Modifications Committee in 2004 and the Zoning Administrator in 2011, and 2013, were authorized to approve deviations from the sign standards of the North Ford PC to allow the original multi-tenant identification sign.

Regarding the argument that the multi-tenant sign is not a sign type authorized by the North Ford PC, the PC permits each individual business to have an identification ground sign or an identification wall sign. The North Ford PC does not prohibit more than one identification ground sign from being incorporated into a single sign. Such consolidation is good planning practice that should be encouraged, even if it involves modification of the height, number and area of signs.

### Sign Illumination

The appellant raised concerns regarding the illumination generated by the proposed new sign at the intersection of Bison Avenue and Camelback Street. In reviewing the application, the Zoning Administrator took into consideration input from staff (Attachment PC 3), written testimony (Attachment PC 7), and public testimony at the public hearing related to the impact of illumination on neighboring residential properties (Attachment PC 4). In response to those concerns, conditions of approval were included limiting the hours of illumination of the new monument sign to between 6 a.m. and 10:00 p.m., daily.

The applicant, in response to the letter of appeal, has provided additional information related to the ambient lighting at the intersection of Bison Avenue and Camelback Street (Attachment PC 8). The conclusions of the lighting analysis is that the increased illumination generated by the new sign will be perceptible immediately in front of the sign, but that any increase in illumination will be negligible or imperceptible as the distance increases away from the intersection. Staff observed the nighttime lighting at the intersection of Bison Avenue and Camelback Street generated by the existing street lights and the traffic signals, and concurs with the conclusions of the lighting engineer.

### Compatibility

The appellant also raised a concern that the addition of the new monument sign at the intersection of Bison Avenue and Camelback Street is not compatible with the surrounding area. Bison Avenue is designated as a Primary Road (Four Lane Divided) in the Circulation Element of the General Plan. Bison Road is heavily traveled by motorists to access the SR-73 Toll Road. Staff is of the opinion that the addition of freestanding signs at the subject property, and in particular at the corners of the subject property is consistent with signage typically provided for any shopping center in such a setting. The fact that the proposed monument sign includes the names of individual tenants does not affect compatibility with the surrounding area since it remains a monument sign. However, the issue raised and addressed with regard to the illumination is directly related to compatibility, and conditioned to alleviate that impact.

### Conclusion

For the reasons above, staff recommends that the Planning Commission determine that the Zoning Administrator was within the authority as specified by the North Ford PC, the Sign Code and the Modification Permit authority. That the two monument signs as proposed, provide adequate tenant identification and visibility, that the conditions of approval have adequately addressed the illumination concerns of the residential neighbors, and that the signs are compatible with the surrounding area.

### Alternatives

As the review authority, the Planning Commission may also:

- 1. Affirm, in part, the action of the Zoning Administrator by modifying or adopting additional conditions of approval; or
- 2. Revise the action of the Zoning Administrator and deny the Modification Permit (a draft resolution for this action is provided as Attachment PC 9).

### **Environmental Review**

The project qualifies for Class 11 (Accessory Structures) categorical exemption, Section 15311 of the California Environmental Quality Act. This class exempts construction, or

placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to on-premise signs.

### Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet (excluding intervening rights-of-way and waterways) of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:	Submitted by:
Patrick J. Alford, Planning Manager	Brenda Wisneski, AICP, Deputy Director

## **ATTACHMENTS**

PC 1	Draft Resolution of Approval with Findings and Conditions
PC 2	Project Plans
PC 3	Jan. 24, 2013, Zoning Administrator Staff Report
PC 4	Excerpt of Jan. 24, 2013, Zoning Administrator Minutes
PC 5	Letter of Appeal
PC 6	Excerpt of North Ford PC Regulations
PC 7	Photos/Correspondence Received
PC 8	Applicant's Letter in Response to the Appeal
PC 9	Draft Resolution of Denial with Findings

# **Attachment No. PC 1**

Draft Resolution of Approval with Findings and Conditions

### **RESOLUTION NO. 2013- DRAFT**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING AN APPEAL AND UPHOLDING AND AFFIRMING THE DECISION OF THE ZONING ADMINISTRATOR AND APPROVING MODIFICATION PERMIT NO. MD2012-016 FOR THE NEWPORT NORTH SHOPPING CENTER LOCATED AT 1200 BISON AVENUE (PA2012-168)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

### SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by John Murphy on behalf of the Irvine Company, property owner, with respect to property located at 1200 Bison Avenue legally described as Lot 6, Tract 12309, requesting approval of a Modification Permit.
- 2. The subject property is located within the PC-5 Zoning District (North Ford Planned Community, General Commercial Area 3) and the General Plan Land Use Element category is CG (General Commercial).
- 3. The applicant requests a Modification Permit to allow reconstruction of the existing and construction of a new second freestanding multi-tenant monument sign to identify on-site retail tenants and the project, where the North Ford Planned Community District Regulations restrict the property to a freestanding signs for project identification only. Additionally, the freestanding signs will exceed the maximum height of four (4) feet specified by the Planned Community District Regulations for monument signs, and more than the 20 percent increase that can be authorized by a comprehensive sign program.
- 4. A public hearing was held on January 24, 2013, by the Zoning Administrator in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting. The Zoning Administrator was conditionally approved the application, with the findings and conditions as stated in Resolution No. ZA2013-005.
- 5. On February 6, 2013, an application was received, appealing the decision of the Zoning Administrator that approved Modification Permit No. 2012-016. The appellant raised issues related to sign type, sign illumination, and compatibility with the surrounding area.
- 6. A public hearing was held on April 3, 2013, by the Planning Commission in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and

considered by, the Planning Commission at this meeting. The application was conditionally approved.

### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

- 1. The project has been reviewed, and qualifies for a Class 11 (Accessory Structures) categorical exemption pursuant to Title 14 of the California Code of Regulations (Section 15311, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act).
- 2. Class 11 exempts construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to on-premise signs.

### SECTION 3. REQUIRED FINDINGS.

Modification Permit to allow the construction of two freestanding signs to exceed the permitted height and to allow the new signs to identify individual tenants (multi-tenant monument signs), where the North Ford Planned Community District Regulations limit the monument signs to 4 feet tall and project identification only.

In accordance with Section 20.52.050.E (Findings and decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a Modification Permit are set forth:

### <u>Finding</u>

A. The requested modification will be compatible with existing development in the neighborhood.

### Facts in Support of Finding

- 1. The subject property is located in the PC-5 (North Ford Planned Community, Area 3) District and is designated CG (General Commercial) by the Land Use Element of the General Plan. This district is intended to provide for a wide variety of commercial activities oriented to primarily serve citywide and regional needs. The existing commercial development and proposed signage is consistent with this land use designation. The application of the Zoning Code provisions for signs in place of the North Ford Planned Community District Regulations is appropriate since the commercial shopping center is comparable to other such commercial centers located citywide. The proposed signage is accessory to the primary use.
- 2. The freestanding signs, as proposed, are in scale with the property street frontages in that the maximum permissible size for each sign does not exceed 150 square feet.

3. The changes to the existing monument sign and the proposed new monument sign are consistent and comparable with other commercial properties located citywide which have not been deemed incompatible with the surrounding neighborhood.

### Finding

B. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.

### Facts in Support of Finding

- 1. The perpendicular orientation of the westerly building to Bison Avenue obstructs the visibility of the tenant wall signs on all buildings that generally face the interior parking lot.
- The freestanding signs as proposed will provide enhanced visibility for vehicular traffic traveling eastbound on Bison Avenue for project identification and individual tenants that range in distance from the street right-of-way of between 35 and 100 feet. This is important for visibility to eastbound Bison Avenue traffic as they approach Camelback Street, which is the last opportunity to access the shopping center, since U-Turns are prohibited to eastbound traffic at the intersection of Bison Avenue and MacArthur Boulevard.
- 3. The proposed increased height of the freestanding signs is necessary due to the overall size of the commercial project, placement of the buildings on the site, and the speed of traffic on Bison Avenue and MacArthur Boulevard. Additionally, several tenants are located interior to the property with limited or obstructed sign visibility from the roadways.
- 4. The change to the existing monument sign will increase in area to 81 square feet and increase in height to 9 feet; and the new monument sign will be 56 square feet and 6 feet 6 inches tall, will provide adequate sign area to provide tenant identification that will be readily visible from the adjacent roadways.

### Finding

C. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.

### Facts in Support of Finding

1. The property is developed with four buildings with tenant identification wall signs, some of which are not directly visible from the roadways and which will be supplemented by the visibility of the monument signs.

2. The modification permit will allow freestanding signs that are in scale with the buildings and that provide enhanced visibility from MacArthur Boulevard and Bison Avenue frontages to the greatest extent possible.

### <u>Finding</u>

D. There are no alternatives to the modification permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.

### Facts in Support of Finding

1. The granting of a modification permit to allow the increased height of the freestanding signs, will also allow identification of multiple tenants with enhanced visibility from MacArthur Boulevard and Bison Avenue. The modification to allow the increased height of the second multi-tenant identification sign will provide visibility to vehicular traffic traveling eastbound on Bison Avenue and allow for direction to the Camelback Street entrance to the shopping center. The visibility provided by the increased height is important since vehicular traffic cannot make a U-Turn at MacArthur Boulevard. Similar provision could not be granted within the parameters of the North Ford Planned Community District Regulations or the Zoning Code that could enhance visibility to remedy the restricted traffic movements in and around the site or on the adjacent roadways.

### **Finding**

E. The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.

### Facts in Support of Finding

- 1. The proposed freestanding signs are consistent with the multi-tenant signage of the commercial projects within North Ford Planned Community and elsewhere in the City and for those reasons will not be detrimental to public health, safety, or welfare to the occupants of the property, nearby properties, the neighborhood, or the City.
- 2. The monument signs as recommended will not interfere with sight distance for vehicles entering or exiting the property from the driveways on Bison Avenue or Camelback Street.
- 3. The signage is for commercial uses in a commercial district and is not in or adjacent to a residential district.

- 4. No foreseeable detriment will result from the approval of the modification permit as conditioned to limit the height and number of multi-tenant monument signs (two only, multi-tenant project signs), with identification of no more than three tenants per sign as recommended by staff; one at the MacArthur Boulevard Frontage and one at the intersection of Bison Avenue and Camelback Street.
- 5. The requirement that illumination of the monument sign located at the intersection of Bison Avenue and Camelback Street be controlled by a timer and turned off between the hours of 10:00 p.m. and 6:00 a.m. is appropriate and necessary to alleviate potential detrimental effect on residential neighbors.

SECTION 4. DECISION.

### NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission of the City of Newport Beach hereby denies the appeal and upholds and affirms the decision of the Zoning Administrator and approves Modification Permit No. MD2012-016, subject to the conditions set forth in Exhibit A which are attached hereto and incorporated by reference.
- 2. Modification Permit applications do not become effective until 14 days following the date of action. Prior to the effective date, the applicant or any interested party may appeal the decision of the Planning Commission to the City Council by submitting a written appeal application to the City Clerk. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

PASSED, APPROVED AND ADOPTED THIS 3<sup>rd</sup> DAY OF APRIL, 2013.

AYES:	
NOES	:
ABST	AIN:
ABSE	NT:
BY:	
	Michael Toerge, Chairman
BY:	
	Fred Ameri, Secretary

### **EXHIBIT "A"**

### CONDITIONS OF APPROVAL

- 1. The development shall be in substantial conformance with the approved site plan, details, and elevations, except as noted in the following conditions and Exhibit "B."
- 2. All signs shall be maintained in accordance with Section 20.42.170 (Maintenance Requirements) of the Newport Beach Municipal Code. Temporary and exempt signs not specifically addressed in this Modification Permit shall be regulated by the provisions of Chapter 20.42 of the Newport Beach Municipal Code.
- 3. Locations of the signs are limited to the designated areas and shall comply with the limitations specified herein and any applicable sight distance provisions of Chapter 20.42 of the Newport Beach Municipal Code or required by the Public Works Department (City Standard 110-L, using S=525 feet for MacArthur Boulevard). Additionally, the applicant shall provide Sight Distance Exhibits for review and approval by the Public Works Department prior to issuance of building permits, if applicable.
- 4. Prior to issuance of building permits for either monument sign, a survey shall be performed to accurately depict the location of the monument signs in relation to the property line and a copy shall be attached to and incorporated into the construction plans.
- 5. In the case of the monument sign located at the intersection of Bison Avenue and Camelback Street, the plans submitted for building permits shall depict and call out all traffic signal equipment located within close proximity to the proposed sign. The AsBuilt Traffic Signal Plan included with the Staff Report Attachment ZA 4, shall also be included in the construction plans.
- 6. The plans submitted for building permits shall show the location of existing Southern California Edison (SCE) Easement.
- 7. Prior to issuance of building permits, the applicant shall submit to the Planning Department an additional copy of the approved architectural plans for inclusion in the Planning Division file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this approval and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
- 8. A building permit shall be obtained prior to commencement of the construction and/or installation of the signs, and in accordance with the applicable Building Codes.

- 9. A copy of the resolution, including conditions of approval Exhibit "A," and Exhibit "B" shall be incorporated into the Building Department and field sets of plans prior to issuance of the building permits for the freestanding signs, to identify this approval as the authority for location, size and placement.
- 10. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
- 11. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Newport North Center Sign Modification Permit including, but not limited to Modification Permit No. MD2012-016 (PA2012-168) and the determination that the project is exempt under the requirements of the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
- 12. The lighting source for the monument sign located at the intersection of Bison Avenue and Camelback Street shall be controlled by a timer to automatically cease operation between the hours of 10:00 p.m. and 6:00 a.m., daily.

### **EXHIBIT "B"**

### **SIGN MATRIX**

### Frontages:

Sign 1.1, MacArthur Boulevard Frontage

Sign 1A.1, Bison Avenue Frontage

Type of Sign & Location	Other Requirements
Monument Sign 1.1 Multi-Panel and Project Identification Sign, MacArthur Blvd	<ul> <li>Max Height: 8 feet 11 inches, average height</li> <li>Max Length: 14 feet. in overall length</li> <li>Max Sign Area: 95 sq. ft.</li> <li>Max Vertical Dimension: Logo or Letter: 36 in; 6-in minimum letter height.</li> <li>Location: Shall be verified by a survey of the existing sign and any change shall be verified to maintain the existing distance from edge of the trail pavement which is approximately 8 feet.</li> <li>Shall not identify more than three (3) retail tenants per side.</li> </ul>
Monument Sign 1A.1 Multi-Panel and Project Identification Sign, Bison Avenue	<ul> <li>Max Height: 6 feet 6 inches, average height</li> <li>Max Length: 9 feet 5 inches, overall length</li> <li>Max Sign Area: 44 sq. ft.</li> <li>Max Vertical Dimension, Logo or Letter: 36 in; 6-in minimum letter height.</li> <li>Location: Minimum of 8 feet from property line, unless otherwise required to be greater by the Public Works Department.</li> <li>Shall not identify more than three (3) retail tenants.</li> <li>The lighting source shall be controlled by a timer to automatically cease operation between the hours of 10:00 p.m. and 6:00 a.m., daily.</li> </ul>

### NOTES/REQUIREMENTS:

- Requirements for all signs per Municipal Code Chapter 20.42, freestanding signs per Section 20.42.080 C, except as provided in this sign matrix.
- b) Sign area is the area measured by two perpendicular sets of parallel lines that surround the proposed logo and sign copy. All signs shall substantially conform to the approved attached sign matrix.
- c) Pursuant to Section 20.42.120.F of the Zoning Code, the Community Development Director may approve minor revisions to this approval if the intent of the original approval is not affected.

# **Attachment No. PC 2**

Project Plans

## **Newport North Center**

Signage and Graphics Program

Newport Beach, California Project Number 11003

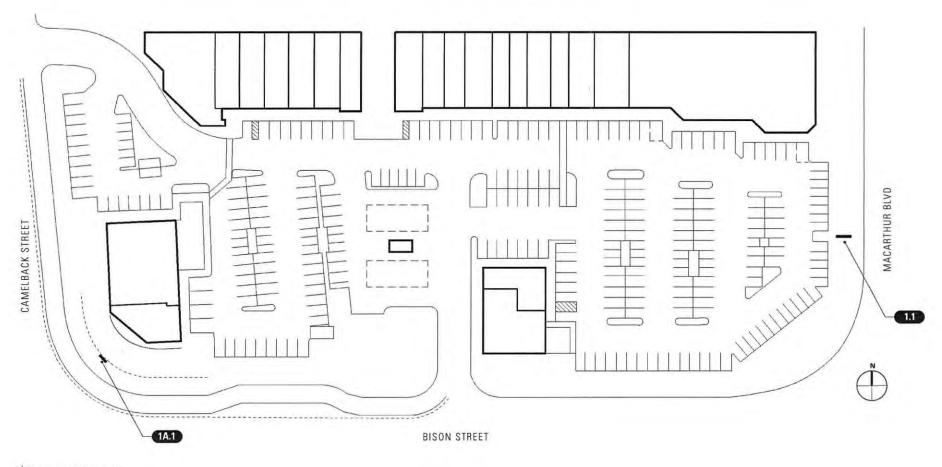
Design Development 11.27.12



### **Davies Associates**

Environmental Graphics
Davies Associates, Inc.
9424 Dayton Way
Suite 217
Beverly Hills, CA 90210
tel 310.247,9572
fax 310.247,9590
www.daviesla.com





### 1 SITE/SIGN LOCATION PLAN

SCALE: N.T.S.



### Davies Associates

Environmental Graphics
Davies Associates, Inc.
9428 Dayton Way
Suite 217
Beverly Hills, CA 90210
tel 310.247.9572
Jax 310.247.9590
www.daviesla.com

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### Newport North Center Signage & Graphics

Signage and Graphics Program Newport Beach, California Project No. 11003 Irvine Company Retail Properties Design Development

Site/Sign Location Plan

Plan

G1



VIEW LOOKING WEST ON BISON



VIEW LOOKING WEST ON BISON



VIEW OF CORNER OF BISON & CAMELBACK



VIEW LOOKING NORTH FROM BISON

### 1 EXISTING CONDITIONS AT CORNER OF BISON & CAMELBACK

SCALE: N.T.S.

### **Davies Associates**



This drawing and the designs included therein as instruments of sovice are and shall means the property of Davies Associates, inc. whether or not the property of Davies Associates, inc. whether or not the property of Davies (Associates, inc. whether or not to be used by two Owers) (Cent on other projects are attentions of this project second by adjument in which they are formed in Secondary Associates, inc.

Signage and Graphics Program Newport Beach, California Project No. 11003

Irvine Company Retail Properties

Design Development

11.27,12 KK Existing **Conditions**  **G2** 



VIEW OF CORNER FROM CAMELBACK



VIEW LOOKING SOUTH FROM CAMELBACK



VIEW LOOKING SOUTHEAST FROM CAMELBACK



VIEW LOOKING NORTHWEST FROM BISON

1 EXISTING CONDITIONS AT CORNER OF BISON & CAMELBACK

SCALE: N.T.S.



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**Newport North Center** Signage & Graphics

Signage and Graphics Program Newport Beach, California Project No. 11003

Irvine Company Retail Properties Design Development

11.27,12 KK Existing Conditions

NOTES NELSTI Mere stoke 1 .125" THK FABRICATED ALUMINUM CAP WITH PAINT FINISH 2 .125" THK ALUMINUM SIGN CABINET WITH PAINT FINISH 3 INTERNALLY ILLUMINATED 1" THK WHITE TRANSLUCENT PUSH THRU NEW POURED IN PLACE CONCRETE BASE WITH FINISH/TEXTURE AND 4 COLOR TO MATCH EXISTING SIGN. 5 12" CONTINUOUS MOW STRIP 6" HIGH X 1/2" THK. FLAT CUT ALUMINUM ADDRESS COPY WITH PAINT FINISH TO MATCH METAL SIGN CABINET. COPY TO BE PIN MOUNTED WITH BLIND ANCHOR STUDS WITH 3/16" STANDOFF SPACERS.





#### Davies Associates Environmental Graphics

Davies Associates, Inc. Sulte 217 Beverly Hills, CA 90210 tel 310.247.9572 fax 310.247.9590

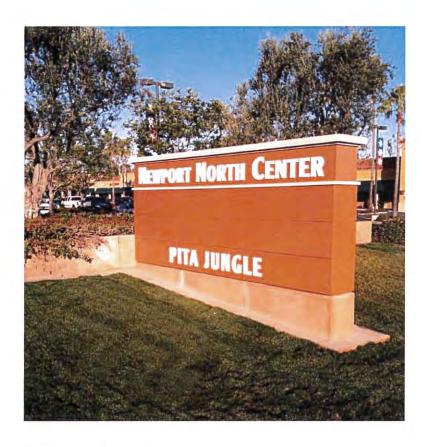
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**Newport North Center** Signage & Graphics

Signage and Graphics Program Newport Beach, California Project No. 11003

**Irvine Company Retail Properties**  Design Development

11.27.12 KK | Sign Type 1 Sign No. 1.1 Project/Tenant ID Monument



1 SIGN TYPE 1 - SIGN NO. 1.1 - EXISTING CONDITION

SCALE: N.T.S.



Davies Associates, Inc. 9424 Dayton Way Suite 217 Beverly Hills, CA 90210 tel 310.247.9572 fax 310.247.9590 www.daviesla.com

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Signage and Graphics Program Newport Beach, California Project No. 11003

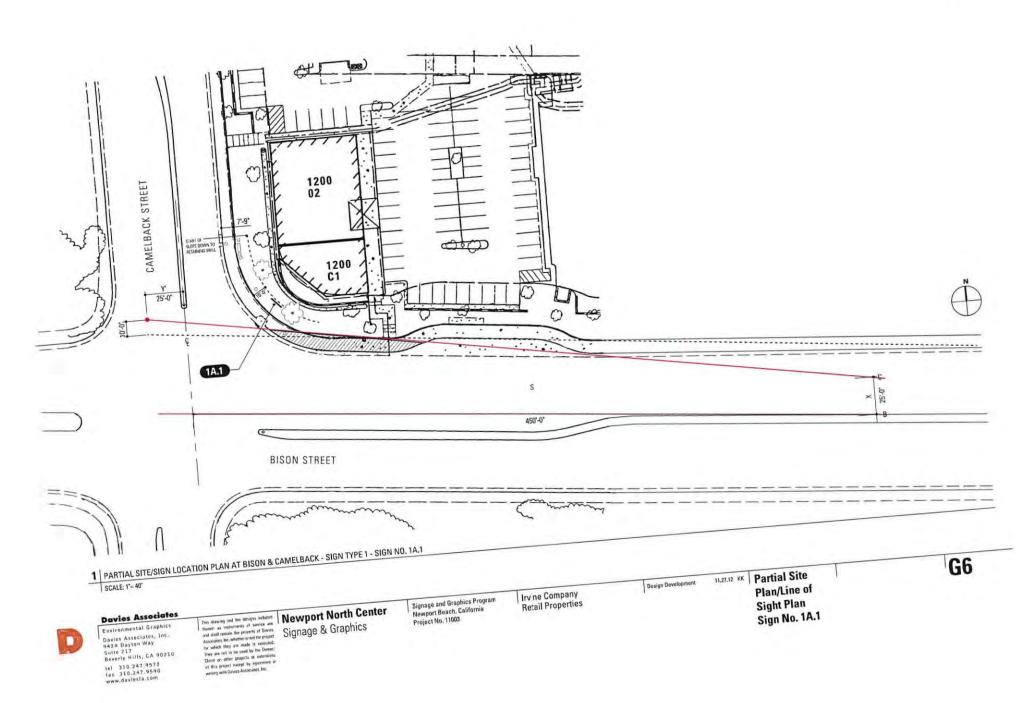
Irvine Company Retail Properties

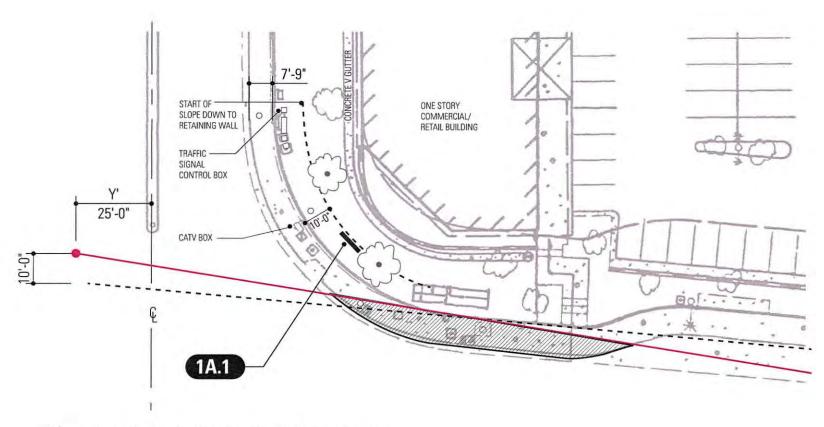
Design Development

11,27,12 KK Sign Type 1

Sign No. 1.1 **Existing** Condition

Project/Tenant ID Monument





1 PARTIAL SITE/SIGN LOCATION PLAN AT BISON & CAMELBACK - SIGN TYPE 1 - SIGN NO. 1A.1

SCALE: 1"= 20'-0"



**Davies Associates** Environmental Graphics

Davies Associates, Inc. 9424 Dayton Way Suite 217 Beverly Hills, GA 90210 tel 310.247.9572 fax 310.247.9590 www.daviesla.com

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Signage and Graphics Program Newport Beach, California Project No. 11003

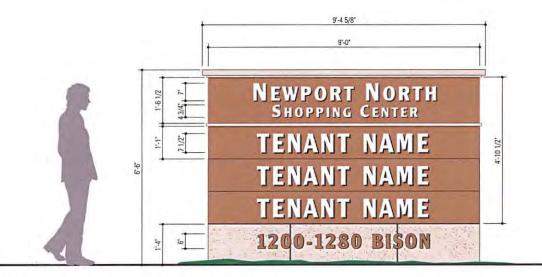
Irvine Company Retail Properties

Design Development

Partial Site/Sign Project/Tenant ID Monument **Location Plan** 

Sign No. 1A.1

NOTES NR\_STI\_MWIT\_INTEX\_OptiA.us 1 .125' THK FABRICATED ALUMINUM CAP WITH PAINT FINISH 2 .125" THK ALUMINUM SIGN CABINET WITH PAINT FINISH 3 INTERNALLY ILLUMINATED I' THK WHITE TRANSLUCENT PUSH THRU ACRYLIC LETTERS NEW POURED IN PLACE CONCRETE BASE WITH FINISH/TEXTURE AND 4 COLOR TO MATCH EXISTING SIGN. 5 12' CONTINUOUS MOW STRIP 6 6" HIGH X 1/2" THK. FLAT CUT ALUMINUM ADDRESS COPY WITH PAINT FINISH TO MATCH METAL SIGN CABINET. COPY TO BE PIN MOUNTED WITH BLIND ANCHOR STUDS WITH 3/16" STANDOFF SPACERS.



1'-0"
1 1'-0"
2 SIDE VIEW

1 ELEVATION - SIGN TYPE 1A - SIGN NO. 1A.1 - 44 SQ. FT. SIGN PANEL AREA - PROPOSED PROJECT/TENANT I.D. MONUMENT SIGN AT CORNER OF BISON & CAMELBACK

SCALE: 1/2" = 1'-0"

### Davies Associates Environmental Graphics

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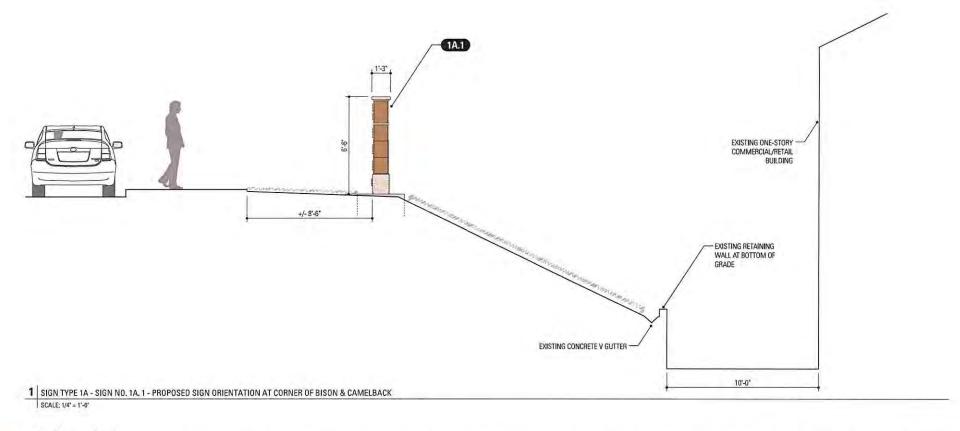
Newport North Center Signage & Graphics Signage and Graphics Program Newport Beach, California Project No. 11003

Irvine Company Retail Properties Design Development

11.27.12 K

Sign Type 1A Sign No. 1A.1 Proposed Project/Tenant ID Monument

SCALE: 1/2" = 1'-8"





#### **Davies Associates**

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#### **Newport North Center** Signage & Graphics

Signage and Graphics Program Newport Beach, California Project No. 11003

Irvine Company **Retail Properties**  Design Development

11,27,12 KK Sign Type 1A Project/Tenant ID Monument Sign No. 1A.1

**Proposed Sign** 

Orientation



VIEW LOOKING NORTH FROM BISON

1 PHOTOSIM - SIGN TYPE 1A - SIGN NO. 1A.1 - (CORNER OF BISON & CAMELBACK)

SCALE: N.T.S.





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Newport North Center Signage & Graphics

Signage and Graphics Program Newport Beach, California Project No. 11003

Irvine Company Retail Properties

Design Development

11.27.12 KK Sign Type 1A.1 Project/Tenant ID Monument **Photosim** 

## **Attachment No. PC 3**

Jan. 24, 2013, Zoning Administrator Staff Report

# CALIFORNIA CALIFORNIA

#### COMMUNITY DEVELOPMENT DEPARTMENT

#### PLANNING DIVISION

3300 Newport Boulevard, Building C, Newport Beach, CA 92663 (949) 644-3200 Fax: (949) 644-3229 www.newportbeachca.gov

## CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

January 24, 2013 Agenda Item No. 2

**SUBJECT:** Newport North Center Monument Signs (PA2012-168)

1200 Bison Avenue

Modification Permit No. MD2012-016

**APPLICANT:** Irvine Company – John Murphy

**PLANNER:** Javier S Garcia, AICP, Senior Planner

(949) 644-3206, jgarcia@newportbeachca.gov

#### **ZONING DISTRICT/GENERAL PLAN**

Zoning Code – PC-5, Area 3 Commercial (North Ford Planned Community) General Plan – CG (General Commercial)

#### **PROJECT SUMMARY**

A Modification Permit to alter an existing monument sign fronting on MacArthur Boulevard, converting it to a multi-tenant sign; and to allow the addition of a second multi-tenant monument sign at the intersection of Bison Avenue and Camelback Street (northeast corner of the property). The existing monument sign will increase in area from 72 to 81 square feet and increase in height from approximately 8 feet to 9 feet; and the new monument sign will be 56 square feet and 6 feet 6 inches tall.

#### RECOMMENDATION

- 1) Conduct a public hearing; and
- Adopt Draft Zoning Administrator Resolution No. ZA2012-\_\_\_\_ approving Modification Permit No. MD2012-016 (Attachment No. ZA 1).

#### **DISCUSSION**

- The property is located in the PC-5 (North Ford Planned Community) District. Newport North Shopping Center is currently occupied by a mix of commercial uses. Land uses include retail storefronts and a gasoline station.
- The property is subject to both pedestrian and vehicular traffic, which prompts the need for adequate visible signage to identify the on-site tenants and direct the public to safely arrive at the shopping center.
- The configuration of the site, limits vehicular access to westbound traffic on Bison Avenue and to northbound traffic on Camelback Street, and the mix of uses create a need for the modification permit to allow an additional monument sign at the corner of Bison Avenue and Camelback Street. This is important for visibility to eastbound traffic as they approach Camelback Street, which is the last opportunity to access the shopping center, since U-Turns are prohibited to eastbound traffic at the intersection of Bison Avenue and MacArthur Boulevard.
- The North Ford Planned Community Regulations limit identification monument signs up to 4-feet-tall and 150 square feet maximum sign area when located within 20 feet of the property line. This regulation does not provide for tenant identification or adequate sign visibility. Sign visibility to identify the site is particularly ineffective for vehicular traffic traveling eastbound on Bison Avenue to facilitate access to the shopping center due to the two limited access points available. Additionally, the visibility of wall signs on the building to identify individual tenants within the shopping center is also limited by the distance of the buildings from the roadways. Therefore, the two monument signs will alleviate visibility by placement in locations that better serve persons seeking the shopping center.
- Staff believes that the additional sign area is necessary to provide adequate visibility and identification of the site and to the mix of individual tenants within the area from on-site and off-site vantage points.
- A modification permit is required to allow the monument signs to exceed the 4 foot height provisions and to allow for the identification of individual tenants whose wall signs are not visible from the roadways. The increased height is necessary for adequate identification of individual tenants with letter sizes that are visible to vehicular traffic traveling on the adjacent roadways.
- This approval will supersede Modification Permit No. MD2011-011, approved August 10, 2011, which permitted a monument sign (project identification only) fronting on MacArthur Boulevard, limited to 14 feet, 4 ½ inches long, 7 feet 11 inches high, 72 square feet of sign area, and identifying the shopping center only and not any individual tenants.

#### **ENVIRONMENTAL REVIEW**

The project qualifies for Class 11 (Accessory Structures) categorical exemption, Section 15311 of the California Environmental Quality Act. This class exempts construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to on-premise signs.

#### **PUBLIC NOTICE**

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet (excluding intervening rights-of-way and waterways) of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

<u>APPEAL PERIOD</u>: An appeal may be filed with the Director of Community Development, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

Prepared by:

Javier S. Garcia, AICP,

Senior Planner BW/jsg

Attachments: ZA 1 Draft Resolution

ZA 2 Vicinity Map

ZA 3 Applicant's Justification Letter

ZA 4 Photos, Traffic Signal Plan, and Project Plans

## **Attachment No. PC 4**

Excerpt of Jan. 24, 2013, Zoning Administrator Minutes

#### **NEWPORT BEACH ZONING ADMINISTRATOR MINUTES** Council Chambers - 3300 Newport Boulevard Thursday, January 24, 2013 **REGULAR HEARING** 3:30 p.m.

A. **CALL TO ORDER** – The meeting was called to order at 3:30 p.m.

> Staff Present: Brenda Wisneski, Zoning Administrator

> > Jason Van Patten, Planning Technician Javier S. Garcia, AICP, Senior Planner

B. MINUTES of January 10, 2013

Action: Approved

C. **PUBLIC HEARING ITEMS** 

ITEM NO. 1 819 West Balboa Boulevard Parcel Map No. NP2012-010 (PA2012-170)

819 West Balboa Boulevard

CD<sub>1</sub>

Jason Van Patten, Planning Technician, provided a brief description of the project stating that an existing single family residence was to be demolished and would be replaced with a proposed two-unit condominium project. Mr. Van Patten added that the application for a parcel map would allow each unit to be sold individually and that the applicant had not requested a waiver of Title 19 Subdivision standards. He further noted that plans for the two-unit condominium project were in plan check and that the applicant was subject to in-lieu housing fees, park dedication fees and fair share fees.

Mike Schmidt, applicant, introduced himself. He stated that he had read the resolution and the required conditions.

The Zoning Administrator opened the public hearing.

One member of the public, Jim Mosher, spoke and stated that he was unclear as to the justification of the required fees specified by Conditions No. 6, 7, and 8. He further had questions and comments regarding the language of the CEQA exemption, Coastal Commission review, and clarity of Conditions No. 5 and No. 10.

In response to Mr. Mosher, Zoning Administrator Wisneski stated that additional fees were assessed based on the increase in number of units.

Seeing that no one else from the public wished to comment, the public hearing was closed.

Zoning Administrator Wisneski noted that the resolution would be revised to clarify the CEQA reference as raised by Mr. Mosher, and approved the resolution as amended for Parcel Map No. NP2012-Q10.

Action: Approved

Newport North Center Monument Signs Modification Permit No. MD2012-016 (PA2012-168) ITEM NO. 2 1200 Bison Avenue CD 4

Javier Garcia, Senior Planner, provided a brief project description and noted minor corrections to the staff report and the resolution. He briefly described the project site and the proposal to increase the height of the existing monument on MacArthur Boulevard by one foot and a new monument sign to be located at the corner of Bison Avenue and Camelback Street. Mr. Garcia described prior history regarding right-of-way changes that occurred with regard to the MacArthur Boulevard property line which may have affected the location of the existing monument sign. Mr. Garcia also stated he was contacted by Mr. Bob McCaffrey expressing his concern with the illumination of the monument signs affecting the residential living areas. Mr. McCaffrey's property at 40 Hillsdale Drive, Belcourt Terrace, indirectly overlooks the subject property. To address this concern, Mr. Garcia distributed an additional condition of approval requiring limiting the illumination of the new monument sign between 10:00 p.m. and 8:00 a.m.

The Zoning Administrator opened the public hearing.

Nancy Mallar, President of the Belcourt Terrace Homeowners Association (a sub-association of North Ford), noted residents within her community expressed concerns with the visibility of the new sign as viewed from the Belcourt Terrace community. She expressed that the existing sign is bright and that other freestanding signs on Bison Avenue are not illuminated.

Jim Mosher, resident, expressed his appreciation that the proposed and existing monument signs include the project address. He felt that the proposed sign was similar to the freestanding signage at the Westcliff Plaza Shopping Center which is an eyesore. He stated that the Planned Community text was last amended on February 26, 2008 and that the PC text should be amended to address the proposed signage. He opined that the PC text allows a 20-foot tall multi-tenant sign and questioned whether the proposed signs achieve reasonable identification of the center. He contends that a sign further west of the center would be a better solution to give motorists earlier notice of the center. He also suggested relocating or constructing a subterranean vault for an existing traffic signal box located at the corner of Bison Avenue and Camelback Street. He also commented on typographical errors in the staff report and the resolution.

Seeing that no one else from the public wished to comment, the Zoning Administrator closed the public hearing.

Mr. Garcia addressed the type of sign that Mr. Mosher questioned. Mr. Garcia described the two types of signs listed in the Planned Community District regulations which are project identification and multi-tenant directory signs. The proposed signs are a hybrid of the two types, and not a multi-tenant directory sign, since not all tenants are identified. Staff also expressed current trending of signs and tenant mix of multi-tenant buildings.

The Zoning Administrator raised questions related to the exact location of the MacArthur Boulevard sign and requested that a condition be included requiring the survey be submitted confirming the location of the existing sign. The applicant concurred with that requirement. The Zoning Administrator expressed that there was a need for the second sign located at the intersection of Bison Avenue and Camelback Street for motorists traveling eastbound. The Zoning Administrator stated, and applicant agreed, that the sign program require the new sign be a minimum of eight feet from the property line, and not allow for discretion by the Public Works Department. Concerns with regard to lighting were discussed. The Zoning Administrator stated that the proposed sign design and materials were consistent with other Irvine Company signs, and that is was important to maintain that consistency. To address the concerns of the Belcourt residents, in addition to the fact that the businesses on the center are closed after 10:00 p.m., the Zoning Administrator supported including the condition added by staff. However, to accommodate business hours, she modified the condition to require the lights to be shut off between the hours of 10:00 p.m. and 6:00 a.m., daily. The discussion and comments were incorporated into the resolution for approval.

Zoning Administrator Wisneski noted that the clarification and changes discussed would be provided with regard to comments raised by Mr. Mosher, the concerns of the neighbors, with concurrence of the applicant, and adopted the resolution as amended for Modification Permit MD2012-016.

**Action:** Approved as amended

#### D. PUBLIC COMMENTS ON NON-AGENDA ITEMS

None.

#### **ADJOURNMENT**

The hearing was adjourned at 4:10 p.m.

The agenda for the Regular Hearing was posted on January 18, 2013, at 2:35 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building and on the City's website on January 18, 2013, at 2:55 p.m.

Brenda Wisneski, AICP, Zoning Administrator

**Attachment No. PC 5** 

Letter of Appeal



## **Appeal Application**

Community Development Department Planning Division 3300 Newport Boulevard, Newport Beach, CA 92663 (949)644-3204 Telephone I (949)644-3229 Facsimile www.newportbeachca.gov

For Office Use Only
Date Appeal Filed:
Fee Received:
Received by:

VV	www.newportbeachca.gov						
Application to appea	al the decision of the:	<ul><li>✓ Zoning Adı</li><li>✓ Planning D</li><li>✓ Hearing O</li></ul>	Director				
Appellant Information	on:	- Healing Of	lioci				
Name(s):	Leslie Daigle						
	2201 Vista Huerl	ta					
	City/State/Zip: Newport Beach, CA 92660						
	) 233-4869 Fax:		Email:				
Appealing Application	on Regarding:	A A					
Name of Applic	cant: Irvine Compact	My-John M	a of Decision:	January	242	V13	
Project No. (PA	11: 2012-168	Dat	ctivity No : MT	2012 -	016	<u></u>	
	1200 BISO			2012	216		
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BISON AV	'e and Camelk	pack Street	, Both Sigi	us are i	Jumi	ng teil	
Reason(s) for Appea	I (attach a separate she	et if necessary):	Please see	attachment			
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Along with application	on, please submit the f	ollowing:					
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Signature of Appella	nt: Isliè	Iceille	Date:	16/2013	3		
		//		131			

#### Brown, Leilani

From: lesliejdaigle [lesliejdaigle@icloud.com]
Sent: Wednesday, February 06, 2013 2:25 PM
To: Garcia, Jay; Brandt, Kim; Brown, Leilani

Cc: lesliejdaigle@icloud.com

Subject: Belcourt Appeal

#### From Evernote:

#### Belcourt Appeal

I appeal the Zoning Administrator's decision of MD2012-016 in my capacity as a Council Member representing the general public.

The City of Newport Beach has a long tradition of developing and adopting Planned Community texts to address the unique conditions of a local area. Conformity with the Planned Community text ensures compatibility with the local area.

The center falls under the North Ford Planned Community text with specific provisions for signage. A proposed illuminated multi-tenant identification monument sign(s) is not modifying an existing sign type permitted in the PC text. This type of sign is invented out of whole cloth.

The Zoning Administrator substantiates the finding "A": "The requested modification will be compatible with existing development in the neighborhood," with untrue facts. (Resolution No. ZA2013-005)

The evidence that "the proposed signage is consistent with the Zoning Code applies the wrong set of standards to the review." The project should be reviewed against the North Ford Planned Community text, which provides a specific sign program for the center.

The evidence that "changes to the existing monument sign and the proposed new monument sign are consistent and comparable with other commercial properties located city wide that are compatible with surrounding areas" applies the wrong standards and analysis. The proposal should be evaluated for its compatibility with the area surrounding the center bearing the sign placement and not in the context of a faraway center's compatibility with its surrounding area.

The introduction of an illuminated multi-tenant identification monument sign at Camelback/Bison is visually intrusive both in its illumination and content to the property owners who have resided next to a center that is a fixture in our community. Residents sought my involvement in the appeal of MD2012-016.

The North Ford Planning Community sign program allows for individual tenant identification signs in the ground and placed on a wall. The sign program permits one Multi-Tenant Directory Sign listing only the name of the business.

The proposal is for a multi tenant identification monument sign located along street frontage. This type of sign is not a permitted sign in the North Ford PC text. It is a hybrid of two permitted sign types.

The Zoning Administer's analysis that an illuminated multi-tenant monument sign should be installed at Camelback/Bison so that a motorist does not miss the center and continue to the next intersection were a U-turn is prohibited misses the intent of the sign. It is a multi-tenant identification monument sign intended to advertise tenants, not identify the center. No such sign type exists in the North Ford PC.

Both the applicant and Zoning Administrator have misinterpreted sign types permitted in the North Ford PC. The applicants proposes to "modify" a sign type that is not permissible in the North Ford PC - a multi tenant identification monument sign designed for advertising tenants to the external environment.

I travel along Bison in an easterly direction as I am a frequent customer of businesses at the center and utilize the US Post Office along Camelback. The conclusion I draw from driving the area is different than that of the project applicant and Zoning Administrator. I would appreciate their consideration to re-visit the area during the evening hours.

The center has been a fixture in the community for many years. Residents already know where it is. There are two signalized intersections within a few hundred feet that prevent a car from building up speed and shooting past the center. I fail to see how motorists miss the center due to a lack of visibility or excessive motorist speed.

The Zoning Administrator applies the wrong set of standards, fails to analyze the project for compatability with the surrounding area, and grants a modification to an impermissible sign type in the North Ford PC.

As I progress through Findings "B" and "C" I find additional shortcomings. At this stage, I believe significant issues have been raised about this approval. I may submit additional issues as this application will be heard at a de novo hearing of the Planning Commission.

Let me be clear. I have been elected, and re-elected, to fairly represent my constituents. The crux of the resident's concerns is the illumination and content of a multi-tenant monument sign located at the corner of Camelback and Bison.

Please contact me at (949) 233-4869 if you want to discuss my appeal of MD2012-016. Thank you.

## Attachment No. PC 6

Excerpt of North Ford PC Regulations

#### E. Signs

#### 1. Identification Sign Area - General Standard

Only one (l) single or double-faced identification sign shall be permitted per street frontage for each individual business.

No sign shall exceed an area equal to one and one-half (l-l/2) square feet of sign for each one (1) foot of lineal frontage of the building or store. However, no sign shall exceed 200 square feet in area per face.

#### a. Identification Ground Sign

An identification ground sign shall not exceed four (4) feet above grade in vertical height. Also, ground signs in excess of 150 square feet in area (single face) shall not be erected in the first twenty (20) feet, as measured from the property line, of any streetside setback. However, the above standards shall not apply to the Multi-Tenant Directory sign or the allowed signs listed in the Sign Appendix of this Ordinance.

#### b. Identification Wall Sign

In no event shall an identification sign placed on a wall comprise more than 10 percent of the area of the elevation upon which the sign is located. Said signs shall be fixture signs. Signs painted directly on the surface of the wall shall not be permitted.

#### 2. Restaurant Pole Sign (including bar and theater/nightclub)

One (1) identification pole sign per site will be allowed.

If a pole sign is utilized it shall be in lieu of other identification signs allowed by E. 1. a. and b. above. Pole signs shall be limited to a maximum height of twenty (20) feet and a maximum area of fifty (50) square feet per face, double-faced.

#### 3. Multi-Tenant Directory Sign

One (1) directory sign listing only the name of the firms or businesses on a site shall be allowed. Said sign shall be limited to a maximum height of twenty (20) feet. Panels identifying each individual store shall be no larger than one (1) foot in height and five (5) feet in length.

#### 4. Real Estate Sign

Said sign shall not exceed a maximum area of thirty-two (32) square feet and shall be of a ground type sign.

#### 5. Special Purpose Sign

Signs used to give directions to traffic or pedestrians or give instructions as to special conditions shall not exceed a total of six (6) square feet (single face) in area and shall be permitted in addition to the other signs listed in this section.

#### 6. Additional Signs

Additional signs as listed in the Sign Appendix of this Ordinance shall be permitted according to the criteria and performance standards contained in said appendix.

#### F. Building Height

All building appurtenant structures shall be limited to a maximum height of thirty-two (32) feet.

#### G. Sign Standards

- 1. Signs (to include all those visible from the exterior of any building) may be lighted but no signs or any other contrivance shall be devised or constructed so as to rotate, gyrate, blink or move in any animated fashion.
- 2. Signs shall be restricted to advertising only the person, firm, company or corporation operating the use conducted on the site or the products produced or sold thereon.
- 3. A wall sign with the individual letters applied directly shall be measured by a rectangle around the outside of the lettering and/or the pictorial symbol and calculating the area enclosed by such line.

All signs attached to the building shall be flush mounted.

#### H. Parking

#### 1. Restaurants, bars and theater/nightclubs

Parking shall be in accordance with Title 20 of the Newport Beach Municipal Code.

#### 2. Outdoor, Drive-in and Take-Out Restaurants

Parking shall be in accordance with Title 20 of the Newport Beach Municipal Code.

#### 3. Commercial

One (l) space for each 250 square feet of gross floor area. One (1) loading space for each 10,000 square feet of gross floor area.

#### I. Landscaping

Detailed landscaping and irrigation plans, prepared by a licensed landscape architect, licensed landscaping contractor, or architect shall be submitted to and approved by the Director of Parks, Beaches, and Recreation prior to the issuance of a building permit and installed prior to the issuance of a Certificate of Occupancy.

All landscaping referred to in this section shall be maintained in a neat and orderly fashion.

## **Attachment No. PC 7**

Photos/Correspondence Received

To: ZONING ADMINISTRATOR Subject: Additional Materials Received

Item No. 2a: Additional Materials Received
Zoning Administrator Hearing January 24, 2013
Newport North Center Monument Signs Modification (PA2012-168)

From: bob mccaffrey [mailto:bobmac988@yahoo.com]

Sent: Tuesday, January 22, 2013 2:50 PM

To: Garcia, Jay

**Subject:** PA2012-168

Mr. Garcia

My wife and I reside at 40 Hillsdale Drive Newport Beach. The property involve in this request is very close to our residence which backs up to Bison and overlooks Camelback.

We would attend the meeting but we are out of town and unable to be part of this hearing. If this issue is going to be discussed at a later meeting we would like to be advised and participate.

We object to the signage request and the lumination of the proposed sign. The lighting is a major concern as it will intrude into the bedrooms at the rear of our house.

The concern of the requestor was traffic coming from Jamboree. This is not the primary source of traffic which would need additional signage. This would be primary a form of advertising and would detract from ambience of the neighborhood. The signage would not be in a position to aid traffic flow therefore we strongly oppose this request for a variance.

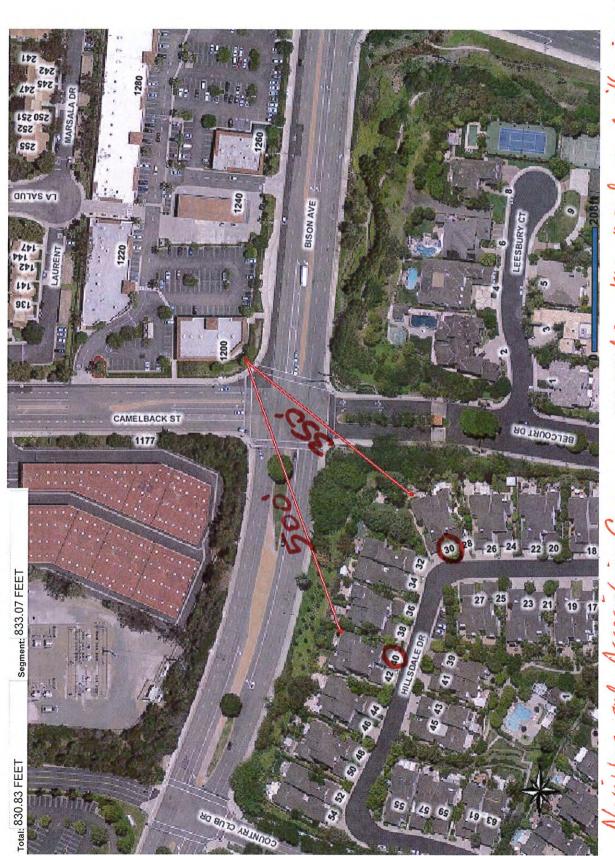
If you have any question regarding our concerns; we can be reached by email.

Thank you in advance for your assistance in this matter.

Mr. and Mrs. Robert McCaffrey 40 Hillsdale Drive Newport Beach, CA 92660



VIEW FROM NORTHBOUND LANE OF CAMELBACK STREET FACING NORTHWEST.



and Illyminating. Association Concerns and 40 Hallsdale Du 30

## **Attachment No. PC 8**

Applicant's Letter in Response to the Appeal



March 7, 2013

Newport Beach Planning Commission Attn: Chairman Michael Toerge 3300 Newport Boulevard Newport Beach, CA 92663

Community Development Department Attn: Jay Garcia, Senior Planner 3300 Newport Boulevard Newport Beach, CA 92663

Subject: Response to Appeal of Zoning Administrator Approval of Modification Permit

MD 2012-016, Resolution No. ZA2013-005

#### Dear Chairman Toerge:

On January 24, 2013, following a public hearing, the Zoning Administrator (ZA) for the City of Newport Beach approved a Modification Permit now before the Planning Commission on appeal. CAA Planning, Inc. (CAA), on behalf of Irvine Company, submits the following response and respectfully requests that the Planning Commission deny the subject appeal.

#### **Background**

The Modification Permit now under appeal applies to the Commercial Planning Area (Newport North Shopping Center) of the North Ford Planned Community (PC) Sign standards. The subject modification permit approval would allow changes to an existing monument sign located at the intersection of MacArthur Boulevard and Bison Avenue (referenced herein as "existing sign") and the placement of a new monument sign to be located at the intersection of Bison Avenue and Camelback Street (referenced herein as "new sign").

On February 6, 2013, an appeal was filed by Council Member Daigle on behalf of the general public stating in part that the North Ford PC sign regulations do not specifically allow for the signs approved by the ZA and that the ZA did not use the correct standards to review the proposed signs. The appeal went on to state that the ZA misinterpreted the sign types permitted in the North Ford PC regulations, and failed to analyze the project for compatibility with the surrounding area. While these appeal comments were made generally, the monument sign proposed for at the corner of Bison Avenue and Camelback Street is the principal concern based on the location in relation to the adjacent Belcourt residential development.

#### Response to Appeal Issues

Standard of Review



Mr. Michael Toerge/Mr. Jay Garcia March 7, 2013 Page 2 of 4

The appeal states that the ZA did not use the correct standard of review in approving the Modification Permit, stating that the North Ford PC sign regulations do not contain specific standards for ground mounted monument signs.

There are several sign types allowed by the PC, including identification ground signs, identification wall signs, restaurant signs, and a 20' tall multi-tenant directory sign. The PC does not include monument signs. The City's sign code (Zoning Code Section 20.42.010 E.) specifies that in Planned Community districts, the sign regulations contained in a PC prevail, except where the PC does not provide regulations for a particular sign type or situation, in which case the Zoning Code prevails. In this instance, the PC does not include regulations for a monument sign, so the sign regulations contained within the Zoning Code are used.

The application of the Zoning Code provision for signs in place of the North Ford PC is appropriate since the PC does not include monument signage and because the commercial shopping center is comparable to other such commercial centers located citywide and should be allowed monument signage. The Zoning Code allows monument signs with a maximum average height of 6' and a maximum width 1.5 x the average height.

The proposed Bison Avenue and Camelback Street sign is 6'6" in height and 9'4<sup>5/8</sup>" in width. This exceeds the height that is allowed by the zoning code by 6" and, therefore, requires a modification permit. The City's modification permit process allows an increase in the height, area and number of signs (Zoning Code Section 20.52.050).

The ZA approved the modification permit to allow for this increase in size from 6' to 6'6". The width of the sign at  $9'4^{5/8}$ " is consistent with the Zoning Code standard of 1.5 x the average height (1.5' x 6.5' = 9.75'). With the modification permit, the sign is consistent with the City's standards for monument signs. By applying Zoning Code Section 20.41.010.E, for signs within Planned Communities, the ZA used the correct standard of review in approving Modification Permit 2012-016 and monument signs are allowed.

#### Compatibility with the Surrounding Area

The appeal states that the approved monument signs are not compatible with the neighborhood setting and specifically that the proposed monument sign at the intersection of Bison Avenue and Camelback Street is of particular concern because the illumination is visually intrusive to nearby (Belcourt) residents.

In approving the modification permit, the ZA correctly referenced that the shopping center is designated CG (General Commercial) by the Land Use Element of the Newport Beach General Plan and that the CG District is intended to provide a wide variety of commercial activities oriented to primarily serve citywide or regional needs. The ZA found that the changes to the existing monument sign at MacArthur Boulevard and Bison Avenue and the new monument sign at Bison Avenue and Camelback Street are in scale with the property street frontages and consistent and compatible with other commercial properties located citywide. This finding is



Mr. Michael Toerge/Mr. Jay Garcia March 7, 2013 Page 3 of 4

consistent with the substantial vehicular traffic flows adjacent to the shopping center documented by the Orange County Transportation Authority as follows: 7,000 vehicles per day on Bison Avenue and 34,000 vehicles per day on MacArthur Boulevard.

The ZA found that the monument sign at Bison Avenue and Camelback Street would provide enhanced visibility for vehicular traffic traveling eastbound on Bison Avenue for project identification and individual tenants that range in distance from the street right-of-way between 35 and 100 feet. The Bison Avenue and Camelback Street traffic signal provides the only entry to the shopping center for vehicles traveling eastbound (towards MacArthur Boulevard). There is no left-in access to the shopping center from Bison Avenue and U-turns are prohibited at the Bison Avenue and MacArthur Boulevard intersection; if a vehicle misses the shopping center at the Camelback Street entry the next opportunity to turn around is at The Bluffs shopping center.

Although both monument signs will be illuminated (and the existing sign on MacArthur Boulevard has been illuminated for several years), as stated in the appeal, the monument sign proposed at Bison Avenue and Camelback Street is of particular concern because it will be located across the intersection from the Belcourt residential development. It should be noted that the existing ambient light at this location is typical of other comparable four-way signalized intersections with pedestrian crossings from sidewalks which are illuminated by street lights. At this location, traffic movements are controlled by through signals and left turn arrows for vehicles travelling on Bison Avenue and Camelback Street and entering/exiting the Belcourt residential development.

Upon receipt of a written comment of concern from a Belcourt resident in advance of the ZA Hearing, the new monument sign was specifically conditioned by the ZA to address the concern of illumination. The condition required that a timer be installed to ensure that the sign would not be illuminated between the hours of 10:00 pm and 6:00 am.

The Belcourt resident indicated the following in an email to the project planner, Mr. Jay Garcia, on January 22, 2013. With respect to lighting, the email states: "The lighting is a major concern as it will intrude into the bedrooms at the rear of our house." In response to this comment and the appeal, a special lighting analysis was completed by Linwood Engineering Associates, P.C. Consulting Engineers (included as an attachment). The analysis objectively compares the proposed monument sign illumination in context with existing light sources at the Bison Avenue and Camelback Street location.

The lighting analysis evaluated the type of illumination to be used in the new sign (internally lit with LED) for consistency with the City of Newport Beach Municipal Code, The California Green Code, California Energy Code, and with Standards set by the IES (Illuminating Engineering Society) of North America. Because the sign will be internally lit with LED, the resultant effect is a smooth and even illumination to limit glare into the roadway and adjacent properties.



Mr. Michael Toerge/Mr. Jay Garcia March 7, 2013 Page 4 of 4

The conclusions of the lighting analysis show that the proposed sign installation complies with all local and state codes and standards and that the sign increases light levels perceptibly only in the immediate vicinity of the sign. The increase in light levels at the opposite street corner (across Camelback Street) would be less than 0.002 percent. Light levels at the other street corners across Bison Avenue near the entrance to the Belcourt residential development would be immeasurable. The lighting analysis makes a recommendation relative to how the sign LED lighting should be adjusted to ensure that "light trespass" is kept well below maximum allowed levels.

#### **Summary and Conclusion**

The Zoning Code specifies that when a particular sign type is not called for in a PC's sign regulations, the sign regulations contained in the Zoning Code are to be used. In this case the ZA applied the correct standard of review using the sign regulations provided for within the Zoning Code and in approving the Modification Permit for the two monument signs for the Newport North Shopping Center. As noted, the General Plan land use designation is designated CG (General Commercial) which provides a wide variety of commercial activities oriented to primarily serve citywide or regional needs. The location of the shopping center at the intersection of Bison Avenue and MacArthur Boulevard, principal roadways with substantial traffic volumes, combined with the proximity to a major arterial highway, support the ZA's finding that monument signage is appropriate.

The ZA was responsive to the concern expressed by the Belcourt resident by conditioning the time allowed for the illumination of the new monument sign at the Bison Avenue and Camelback Street intersection. A subsequent lighting analysis confirmed that the type of LED lighting proposed for this particular sign will limit glare onto the roadway and adjacent properties. In fact, the added light levels across the intersection towards Belcourt will be so low as to be immeasurable.

In conclusion, we respectfully request that the Planning Commission deny the appeal of Modification Permit MD 2012-016, Resolution No. ZA2013-005 and uphold the decision of ZA.

Sincerely,

CAA PLANNING, INC.

Shawra L. Schaffon

Shawna L. Schaffner Chief Executive Officer

Attachment: Special Lighting Analysis, Linwood Engineering Associates, P.C.



151 Kalmus Dr, Suite B-200 Costa Mesa, CA 92626 t:714.424.0001 f:714.424.0004

955 Lincoln Avenue Glen Rock, NJ 07452 t:201.857.3998 f:201.857.3994

City of Newport Beach Planning Commission 3300 Newport Blvd Newport Beach, CA 92663

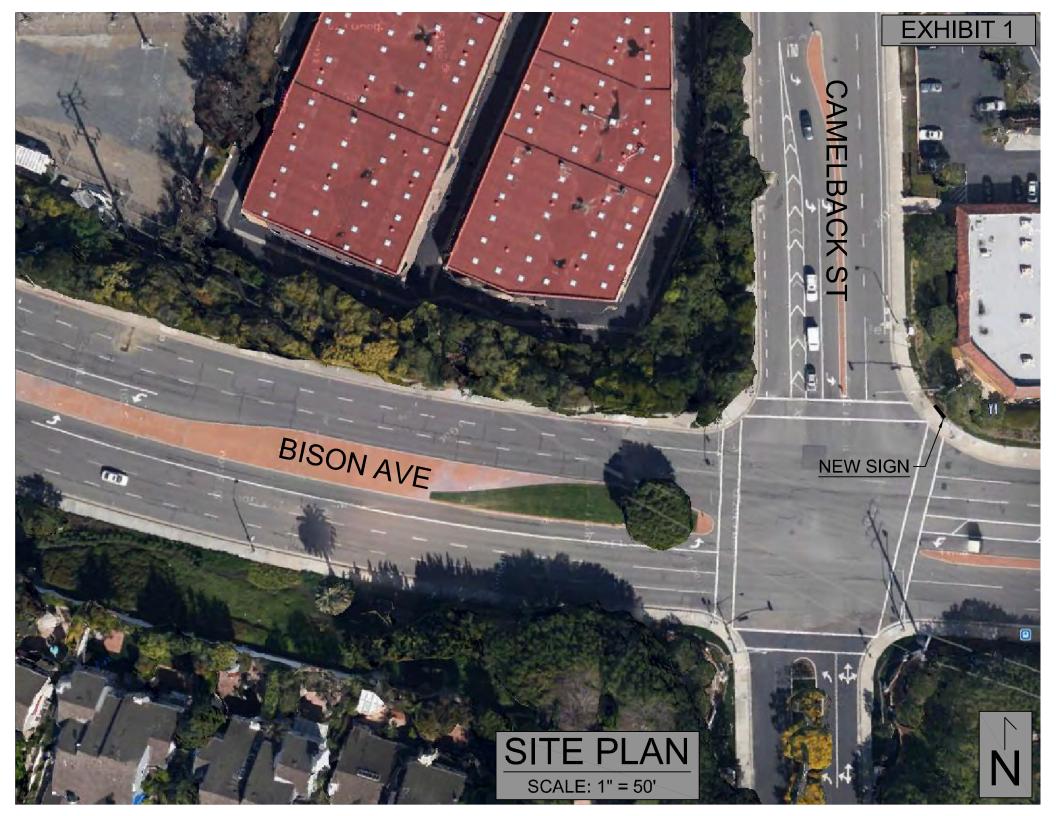
Re: Monument Sign at Corner of Bison and Camelback

Dear Sir or Madam,

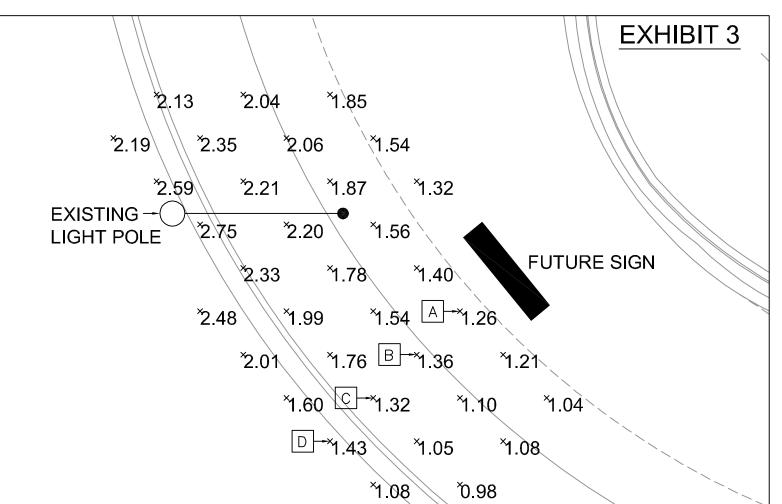
We have completed a thorough analysis of this sign addition and we have come to the following conclusions:

- The sign installation complies with all applicable codes and standards, including:
  - o Newport Beach Municipal Code
  - o California Green Code
  - o California Energy Code
  - o Standards set by the IES (Illuminating Engineering Society) of North America.
- As detailed in Exhibits 2 and 4, the sign will increase light levels perceptibly only in the immediate vicinity of the sign. At the opposite street corner (point E) the change in light level is less than 0.002% compared to existing, or 1 in 50,000. At the other street corners it is so low as to be immeasurable. This dramatic fall off is due to the Inverse Square Law, which states that light levels decrease exponentially with distance<sup>1</sup>.
- To achieve appropriate light levels, the installing contractor shall adjust the dimming feature of the sign as prescribed in the test procedures of Exhibit 6. This will ensure that Light Trespass is kept well below maximum allowed levels<sup>2</sup>.
- The sign is internally lit with LED, which provides a smooth and even illumination to limit glare into the roadway and into adjacent properties<sup>3,4</sup>.

Adam C. Forni, PE, IES
Senior Associate
Linwood Engineering Associates, P.C.



#### **EXHIBIT 2** IMPACT OF NEW SIGN AT VARIOUS POINTS CAMELBACK ST **POINT** DISTANCE FROM **EXISTING ADDED** % ADDED **FUTURE SIGN FC LEVELS FC LEVELS FC LEVELS** HORIZ/VERT HORIZ/VERT **HORIZ/VERT** A - D 5' TO 20' SEE LATER EXHIBITS 0.000 / 0.002 0.00% / 0.00% Ε 115' 0.17 / 0.93 F 175' 0.23 / 0.85 0.000 / 0.000 0.00% / 0.00% G 420' 0.11 / 0.15 0.000 / 0.000 0.00% / 0.00% Ε NW CORNER BISON AVE **NEW SIGN** POINTS A THRU D SEE LATER EXHIBITS G 50' PAST LIGHT POLE (E) LIGHT POLE F SW CORNER SITE PLAN SCALE: 1" = 50'



## **EXISTING LIGHT LEVELS**

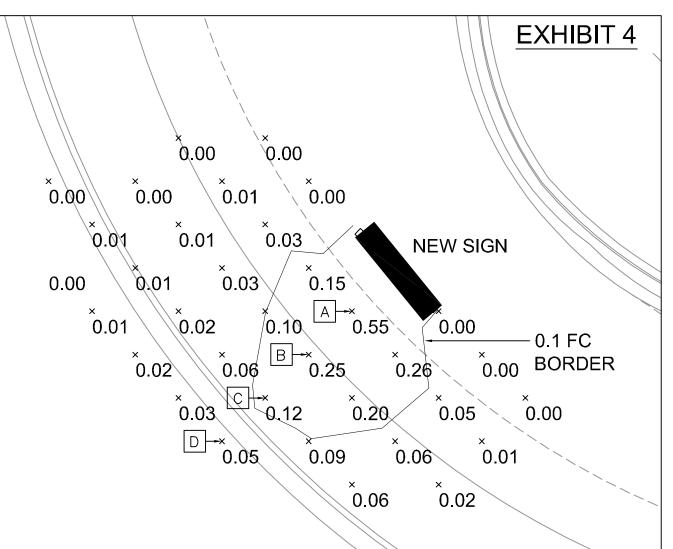
POINT	DISTANCE FROM FUTURE SIGN	EXISTING FC LEVEL HORIZ.
A	5'	1.26
В	10'	1.36
С	15'	1.32
D	20'	1.43

POINTS MEASURED 01 MAR 2013 8PM



## **EXISTING HORIZONTAL ILLUMINANCE**

SCALE: 1/8" = 1'

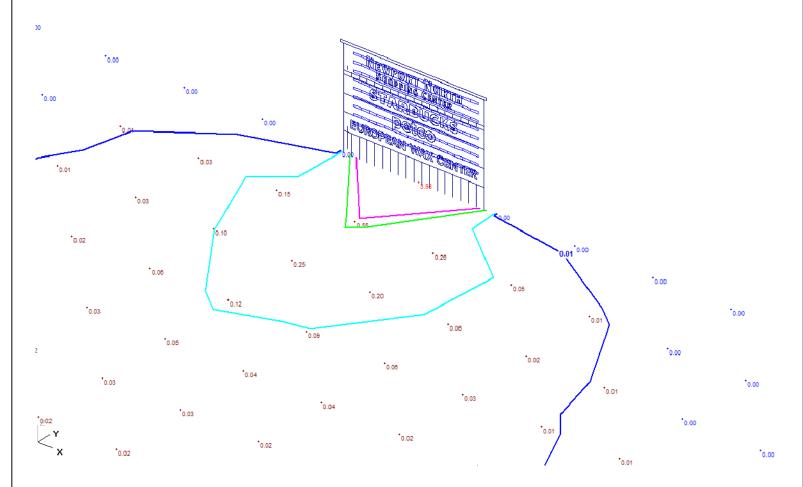


### IMPACT OF NEW SIGN

POINT	DISTANCE FROM FUTURE SIGN	EXISTING FC LEVEL HORIZ.	ADDED FC LEVEL HORIZ.	% ADDED FC LEVEL HORIZ.
A	5'	1.26	0.55	0.55/1.26 = 43%
В	10'	1.36	0.25	0.25/1.36 = 18%
С	15'	1.32	0.12	0.12/1.32 = 9%
D	20'	1.43	0.05	0.05/1.43 = 3%

### ADDED HORIZONTAL ILLUMINANCE

SCALE: 1/8" = 1'



### 3D PHOTOMETRIC MODEL

SCALE: NONE

PRODUCED WITH VISUAL-PRO SOFTWARE WITH 144 LED MODULES, MODEL: SIGN-BOX 701-946-CWSBL.

#### **Exhibit 6. Field Calibration.**

Contractor shall perform the following steps after the sign has been installed:

- 1. After complete darkness, measure the horizontal illuminance level at a point on the ground, 5' in front of the front edge of the sign. The sign should be turned off. The light meter should be facing straight up. Mark down the footcandle level to the nearest hundredth (expected level 1.26 fc).
- 2. Turn on the sign. Adjust the dimmer light level control so that the new illuminance level does not increase more than **0.55 footcandles** above the baseline. (e.g. 1.26 + 0.55 = 1.81)
- 3. Lock the dimmer setting in place.

#### Exhibit 7. References.

- 1. <u>The Inverse Square Law of Light</u>. Georgia State University. <u>http://hyperphysics.phy-astr.gsu.edu/%E2%80%8Chbase/vision/isql.html</u>
- 2. [IESNA] Illuminating Engineering Society of North America. 2000c. Light trespass: Research, results and recommendations. New York: Illuminating Engineering Society of North America. IESNA TM-11–2000. 9 p.
- 3. Newport Beach Municipal Code, Illuminated Sign Standards section 20.42.060H.
- 4. Philip M. Garvey. On-Premise Commercial Sign Lighting and Light Pollution. Leukos Vol 1 No 3 January 2005 Page 7 18

### **Attachment No. PC 9**

Draft Resolution of Denial with Findings

#### **RESOLUTION NO. 2013- DRAFT**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH REVISING THE DECISION OF THE ZONING ADMINISTRATOR AND DENYING MODIFICATION PERMIT NO. MD2012-016 FOR THE NEWPORT NORTH SHOPPING CENTER LOCATED AT 1200 BISON AVENUE (PA2012-168)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by John Murphy on behalf of the Irvine Company, property owner, with respect to property located at 1200 Bison Avenue legally described as Lot 6, Tract 12309, requesting approval of a Modification Permit.
- 2. The subject property is located within the PC-5 Zoning District (North Ford Planned Community, General Commercial Area 3) and the General Plan Land Use Element category is CG (General Commercial).
- 3. The applicant requests a Modification Permit to allow reconstruction of the existing and construction of a new second freestanding multi-tenant monument sign to identify on-site retail tenants and the project, where the North Ford Planned Community District Regulations restrict the property to a freestanding signs for project identification only. Additionally, the freestanding signs will exceed the maximum height of four (4) feet specified by the Planned Community District Regulations for monument signs, and more than the 20 percent increase that can be authorized by a comprehensive sign program.
- 4. A public hearing was held on January 24, 2013, by the Zoning Administrator in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting. The Zoning Administrator was conditionally approved the application, with the findings and conditions as stated in Resolution No. ZA2013-005.
- 5. On February 6, 2013, an application was received, appealing the decision of the Zoning Administrator that approved Modification Permit No. 2012-016. The appellant raised issues related to sign type, sign illumination, and compatibility with the surrounding area.
- 6. A public hearing was held on April 3, 2013, by the Planning Commission in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A

notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting. The application was conditionally approved.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

- 1. The project has been reviewed, and qualifies for a Class 11 (Accessory Structures) categorical exemption pursuant to Title 14 of the California Code of Regulations (Section 15311, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act).
- 2. Class 11 exempts construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to on-premise signs.

#### SECTION 3. FINDINGS.

- 1. The North Ford Planned Community District Regulations establish sign standards that are intended to provide compatible commercial activity.
- 2. The modification would be incompatible with existing development in the neighborhood by allowing a new, internally-illuminated multi-tenant monument sign that is not provided for by the North Ford Planned Community Regulations.
- 3. The illumination of the proposed multi-tenant monument sign would be result in negative visual impacts to the adjacent residential areas.

#### SECTION 4. DECISION.

#### NOW, THEREFORE, BE IT RESOLVED:

 The Planning Commission of the City of Newport Beach hereby reverses the decision of the Zoning Administrator and denies Modification Permit No. MD2012-016.

PASSED, APPROVED AND ADOPTED THIS 3 <sup>rd</sup> DAY OF APRIL, 2013.
AYES:
NOES:
ABSTAIN:
ABSENT:
BY: Michael Toerge, Chairman
BY: Fred Ameri, Secretary

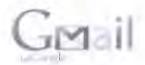
Correspondence

Page 1 of 2

Item No. 2a

Newport North Center Monument Signs Appeal

PA2012-168



Robert M < rmccaffrey8@gmail.com>

(no subject)

1 message

Robert M < rmccaffrey8@gmail.com>
To: Robert M <rmccaffrey8@gmail.com>

Wed, Apr 3, 2013 at 5:05 PM

Communities and Property Impacted

### **Newport North Center Monument Signs**

Zone PC-5 North Ford Planned Community

Jay Garcia, AICP, Senior Planner City of Newport Beach 949-644-

3206

Communities and Property Impacted

Bayridge One Ford Road Belcourt Liberty Baptism Church min U Store

Contacts regarding traffic on MacArthur and Bison Brad Sommers, PE Senior Civil Engineer Public Works Department City of Newport Beach

949-644-3326

European Wax Center

Wallace Talbert, GIS Analyst Geographic Information System Section Orange County Transit Authority 714-560-5763

**Business within Newport North Center and Hours of Operations** 

Business Hours of Operation

Sole Comfort 10:00 AM to 7:00 PM Monday to Saturday

11:00 AM to 6:00 PM Sunday

Monday to Friday

Labels 10:00 AM to 6:00 PM Monday to Saturday

And the state of t

9:00 AM to 6:00 PM Saturday and Sunday

5.00 AIVI to 6.00 FIVI Saturday and Sunday

Pilates Plus 6:00 AM to 7:00 PM Monday to Saturday

10:00 AM to 6:00 PM Sunday

Elegance Dentistry 9:00 AM to 5:00 PM Monday to Friday

8:30 AM to 8:00 PM

Radiant SPA

11:00 AM to 10:00 PM Sun	day to	
	11:00 AM to 11:00 PM	
4:30 AM to 9:00 PM Me	onday to Friday	
4:30 AM to 8:00 PM Sa	turday	
4:30 AM to 7:00 PM Su	ınday	
8:00 AM to 5:00 PM Mor	nday to Friday	
7:00 AM to 7:00 PM Mond	day to Friday	
8:00 AM to 5:00 PM Sa	turday	
8:00 AM to 7:00 PM Mor	nday to Friday	
8:00 AM to 5:00 PM Sa	turday	
10:00 AM to 6:00 PM Mon	day to Saturday	
10:00 AM to 6:00 PM Mo	nday to Friday	
9:00 AM to 7:30 PM Sun	day to Saturday	
9:30 AM to 6:00 PM Mon	day to Friday	
10:00 AM to 5:00 PM Sa	turday	
9:00 AM to 9:00 PM Mo	nday to Saturday	
9:00 AM to 7:00 PM Su	inday	
6:00 AM to 10:00 PM Mor	nday to Saturday	
7:00 AM to 9:00 PM Su	inday	
7:30 AM to 9:00 PM Mor	day to Friday	
8:00 AM to 9:00 PM Sa	turday and Sunday	
24 hours Sunday to Saturday		
11:00 AM to 9:00 PM Sun	day to Wednesday	
	4:30 AM to 9:00 PM	

5:30 AM to 9:00 PM

7:30 AM to 6:00 PM

9:30 AM to 6:00 PM

11:00 AM to 10:00 PM Thursday to Saturday

Monday to Friday

Saturday

Sunday

# Newport North Center Monument Signs Appeal



Planning Commission Public Hearing April 3, 2013



### Introduction



### Appeal of Modification Permit MD2012-016

- Modification permit to alter two monument signs (one existing, one new)
- Approved by Zoning Administrator
- Appealed to the Commission by Council Member Daigle

# Vicinity Map





# Site Photographs





VIEW LOOKING WEST ON BISON



IBW LOOKING WEST ON BISON



VIEW OF CORNER OF BISON & CAMELBACK



VIEW LODKING NORTH FROM BISON

# Site Photographs





NEW OF CORNER FROM CAMELBACK



VIEW LODKING SOUTH FROM CAMELBACK



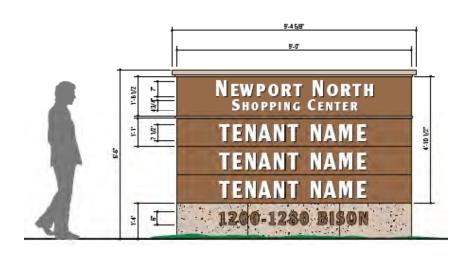
VIEW LOOKING SOUTHEAST FROM CAMELEACK



VIEW LOOKING NORTHWEST FROM BISCH

# **Project Details**



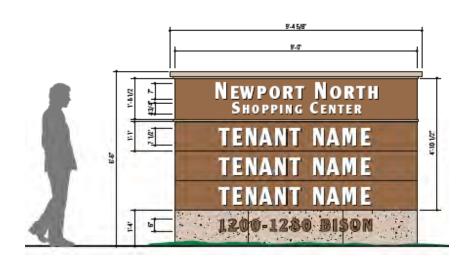


### Sign Type I

- Existing multi-tenant monument sign
- Increase area from 72 sq. ft. to 81 sq. ft.
- Increase height from 8 ft. to 9 ft.

# **Project Details**



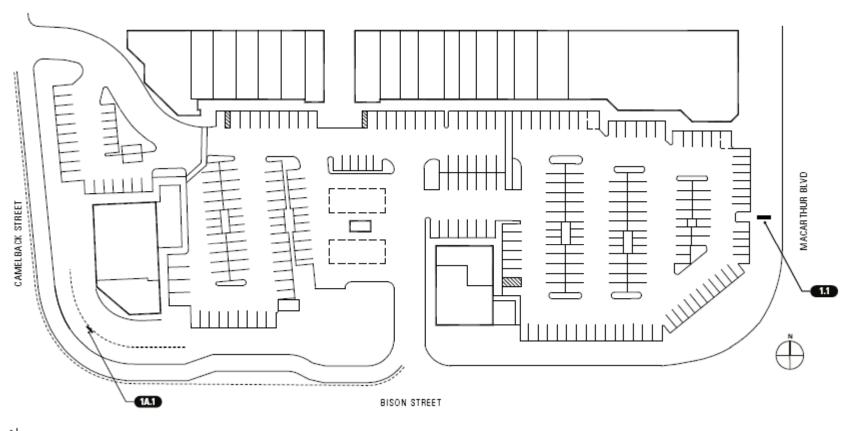


### Sign Type IA

- New multi-tenant monument sign
- 56 sq. ft. in area
- 6-ft., 6-in. in height

# Site Plan





1 SITE/SIGN LOCATION PLAN SCALE N.T.S.

# The Appeal



- Authority of the Zoning Administrator
  - Sign type not listed in North Ford PC
  - Inappropriately used Zoning Code standards
- Impact to adjacent residences
  - Illumination
  - Neighborhood compatibility

# **ZA Authority**



- Zoning Code may be applied when PC is silent
- Height, area, and number of signs may be modified via a modification permit
- North Ford PC does not prohibit consolidation of individual identification ground signs

# Neighborhood Compatibility

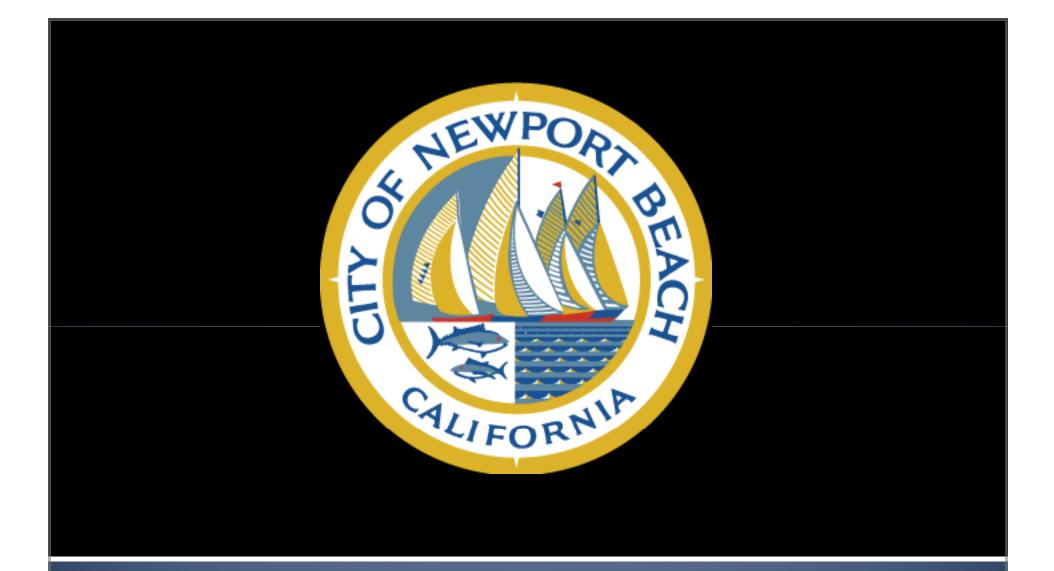


- Illumination
  - No illumination after 10:00 pm
  - No perceptible increase in ambient lighting
- Neighborhood Character
  - Typical of neighborhood center signage
  - No significant change to visual character

## Next Steps



 Any action of the Commission may be appealed to the City Council within 14 days of the decision



#### For more information contact:

Patrick J. Alford, Planning Manager 949-644-3235 palford@newportbeachca.gov www.newportbeachca.gov



#### CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT 3300 NEWPORT BOULEVARD, BLDG. C NEWPORT BEACH, CA 92658-8915 (949) 644-3297

#### Memorandum

To: Planning Commissioners

From: Brenda Wisneski, Deputy Community Development Director

**Date:** March 29, 2013

Re: 441 Old Newport Medical (PA2011-056) - Continuance

It was recently discovered that the public hearing noticed for this item did not clearly state the hearing date. Therefore, the hearing will be re-noticed for April 18, 2013.

### CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

April 3, 2013 Agenda Item No. 3

**SUBJECT:** 441 Old Newport Medical Office Building - (PA2011-056)

Conditional Use Permit No. UP2011-011

**APPLICANT:** John Bral

**PLANNER:** Melinda Whelan, Assistant Planner

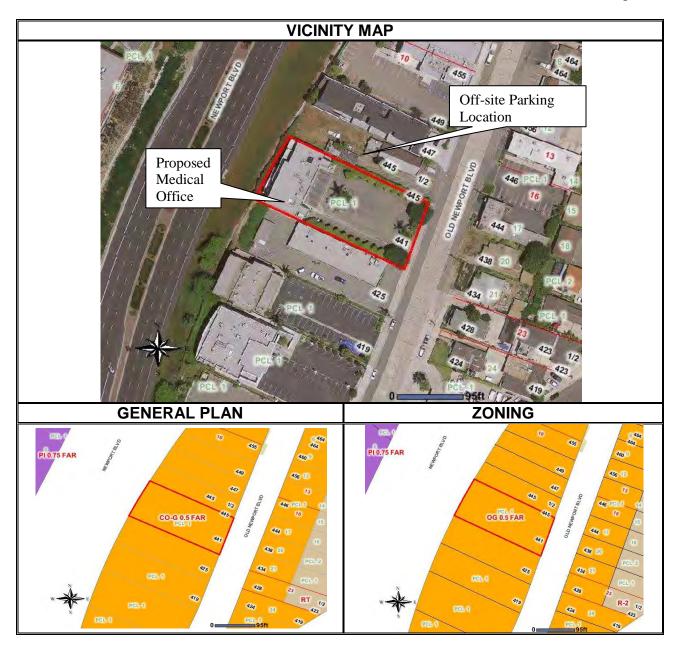
(949) 644-3221, mwhelan@newportbeachca.gov

#### PROJECT SUMMARY

The applicant requests approval of a Conditional Use Permit to allow off-site parking. The applicant has secured the ability to improve the adjacent property at 445 Old Newport Boulevard to accommodate a total of 13 parking spaces during the day. Combined, the proposed on-site and off-site parking spaces will provide the minimum parking spaces required by the Zoning Code for medical uses.

#### **RECOMMENDATION**

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. \_\_\_\_ Approving Conditional Use Permit No. UP2011-011 (Attachment No. PC 1).



LOCATION	GENERAL PLAN	ZONING	CURRENT USE	
ON-SITE	General Commercial Office (CO-G)	Office General (OG)	Vacant General Office	
NORTH	CO-G	OG	Vacant Restaurant	
SOUTH	CO-G	OG	Existing Office	
EAST	CO-G	OG	Existing Residential	
WEST	N/A	N/A	Overlooks Newport Blvd.	

#### INTRODUCTION

#### **Project Setting**

The subject commercial property is located north of Hospital Road on Old Newport Boulevard. The site is approximately 23,080 square feet and is developed with a 11,540-square-foot building formerly occupied by general office uses and is currently being renovated. The rear of the property overlooks Newport Boulevard. The property to the north is developed with a vacant restaurant and accessory building. The property to the south is developed with a commercial office building and a freestanding commercial retail building. Directly across Old Newport Boulevard, to the east, is a mix of homes on commercially zoned lots and general commercial and office buildings.

#### **Background**

#### Planning Commission

On September 6, 2012, the Planning Commission considered the request for Conditional Use Permit No. UP2011-011, to waive 5 off-street parking spaces and to allow 7 spaces to be located on the adjacent property at 445 Old Newport Boulevard (vacant restaurant). Approval would have allowed the building to be converted to medical office. A parking management plan that included a valet parking service was also proposed.

The Commission was concerned with the documentation claiming less parking demand would be generated by the proposed medical office and with the proposed off-site parking location. At the time the property at 445 Old Newport Boulevard was in bankruptcy court and its deteriorated physical condition compromised access to the parking. The Planning Commission also questioned the validity of the off-site agreement. As a result, the Commission was unable to make the required findings and denied the Conditional Use Permit request. The Resolution of Denial, found in Attachment No. PC 2, includes findings for denial made by the Commission.

On September 19, 2012, the applicant appealed the Planning Commission's denial of Conditional Use Permit No. UP2011-011.

#### City Council

Subsequent to filing the appeal, the applicant modified the project, eliminating the need for a parking waiver. At the March 26, 2013, the City Council determined that the project revisions were significant and directed staff to take the project back to the Planning Commission for review and action.

#### **DISCUSSION**

#### Analysis

#### General Plan

The property is designated with a General Plan land use of General Commercial Office (CO-G) which is intended to provide for administrative, professional, and medical offices with limited accessory and retail uses. The proposed medical office use is consistent with the intent and goals of this designation.

#### Zoning Code

The property has a Zoning designation of Office General (OG) 0.5 FAR (floor area ratio) which is intended to provide areas for administrative, professional, and medical offices with limited retail uses. Medical office uses are permitted by-right in this zoning district. With the exception of the required off-street parking, the development complies with the floor area ratio height, setbacks, and other standards of the Zoning Code.

#### Off-site Parking

A private Reciprocal Parking Easement Agreement (Attachment No. PC 3) authorizes the subject use to utilize 445 Old Newport Boulevard, the abutting property to the north, for parking. Essentially the Agreement allows the office site to use the restaurant site for parking during the day and the restaurant site to use the office site for parking in the evening. The Agreement runs with the property and is binding upon change in ownership. So that the City can monitor the availability off-site parking, Condition of approval No. 6 requires the applicant to notify the City of a change of ownership, use or access to the parcel where the off-site spaces are located, or of any termination or default of the Agreement between the parties. Condition of approval No. 7 states that if the agreement is terminated, substitute on- or off-site parking must be provided pursuant to review by the Community Development Director or there must be a reduction in the medical office use in proportion to the parking spaces lost. If the off-site parking is lost then the applicant would have the following options: limit the medical office use to 20 percent of the gross square footage of the office building leaving the remainder of the office building to be used by general office or a use with an equal or lesser parking demand, build a parking structure or underground parking on-site, or find another off-site parking location.

Although the 445 Old Newport Boulevard property is in the Bankruptcy court proceedings, recent updates from the bankruptcy lawyers indicate that the property will be awarded to the original owner. The original owner of 445 Old Newport Boulevard is aware and in agreement with the proposed project and has signed the application. Through the Reciprocal Parking Easement Agreement, the owner of 441 Old Newport Boulevard (proposed medical office building) has the right to improve the abutting property at 445 Old Newport Boulevard with a parking lot that provides a minimum 13

spaces. The improvements include grading, paving and the demolition of a storage shed to provide a renovated and expanded parking lot that will meet current Cityapproved standards. A pedestrian and disabled accessibility path of travel is provided between the abutting properties which has been reviewed by the City Traffic Engineer and the Building Division, and a final approval will be required prior to permit issuance. Condition of approval No. 8 states that improvements at 445 Old Newport Boulevard shall be completed prior to medical office uses occupying the building at 441 Old Newport Boulevard.

#### Findings for Approval

#### Off-site Parking Findings for Approval

Pursuant to Section 20.40.100 B., to approve off-site parking, the Planning Commission shall make the following findings in addition to those required for the approval of a conditional use permit (see following section for conditional use permit findings):

- 1. The parking facility is located within a convenient distance to the use it is intended to serve;
- 2. On-street parking is not being counted towards meeting parking requirements;
- 3. Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area; and
- 4. The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.

The off-site parking located at 445 Old Newport Boulevard is abutting the subject property to the north. The use of on-street parking for the proposed medical use is not proposed. Due to the proximity to the off-site parking, the creation of traffic hazards or negative impacts is not anticipated. The existing Reciprocal Parking Easement Agreement (Attachment No. PC 3) calls for the restaurant site (445 Old Newport Boulevard) to have parking available for the subject office use (441 Old Newport Boulevard) during the office business hours and for the office site to have parking available for the restaurant use during restaurant hours. Upon termination of the agreement the size or capacity of the medical use shall be reduced in proportion to the parking spaces lost or other parking spaces must be secured.

#### Conditional Use Permit Findings for Approval

Pursuant to Section 20.40.100 A., the Planning Commission may approve or conditionally approve a conditional use permit for these types of parking requests only after first finding all of the following per Section 20.52.20 (Conditional Use Permits):

1. The use is consistent with the General Plan and any applicable specific plan;

- 2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;
- 3. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;
- 4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and
- 5. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Due to the proximity to Hoag Hospital, medical office buildings are common along Old Newport Boulevard. Medical offices are consistent with the CO-G General Plan land use designation and are allowed by-right within the OG zoning district. The proposed off-site parking is in a convenient location and permanently available as required by Code. Vehicle circulation has been reviewed by the City Traffic Engineer and a final parking plan is required to be approved prior to permit issuance for the medical office and the off-site parking lot improvements.

#### Summary

With the availability of off-site parking spaces, and compliance with the conditions placed upon the use of the site the proposed off-site parking provides sufficient and reliable parking to meet the minimum code requirements for the proposed medical office use. After a thorough review of the proposal and issues, staff believes the findings can be made and a draft resolution for approval is provided as Attachment No. PC 1.

#### Alternatives

If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission should deny the application and adopt the draft resolution for denial (Attachment No. PC 4). Denial would require the property owner at 441 Old Newport Boulevard to maintain the building with a general commercial office use or a use that would require a 1 space per 250 square feet or less parking demand.

#### **Environmental Review**

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines, Class 1 (Existing Facilities). The medical

use would occupy an existing general office building and utilize existing parking lots that are being renovated with no or neglibile expansion of use.

#### Public Notice

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

Submitted by:

Melinda Whelan Assistant Planner

Brenda Wisneski, AICP, Deputy Director

#### **ATTACHMENTS**

- PC 1 Draft Resolution with Findings and Conditions
- PC 2 Planning Commission Resolution of Denial September 6, 2012
- PC 3 Reciprocal Parking Easement Agreement
- PC 4 Draft Resolution for Denial
- PC 5 Project Plans

### **Attachment No. PC 1**

Draft Resolution with Findings and Conditions

#### **RESOLUTION NO. 2013-**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. 2011-011 TO UTILIZE AN OFF-SITE PARKING LOT AT 445 OLD NEWPORT BOULEVARD FOR AN EXISTING COMMERCIAL OFFICE BUILDING LOCATED AT 441 OLD NEWPORT BOULEVARD (PA2011-056)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by John Bral, with respect to property located at 441 Old Newport Boulevard, and legally described as Parcel 1 of Parcel Map No. 80-719, in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 163, Pages 31 and 32 of Parcel Maps in the office of the Orange County Recorder requesting approval of a conditional use permit.
- 2. The subject property is located within the Office General (OG) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
- 3. The subject property is not located within the coastal zone.
- 4. The applicant proposed a conditional use permit to reduce the required off-street parking and to utilize an off-site parking lot. The project proposes to utilize the recently renovated commercial office building (11,540 square feet) for medical office and to provide 51 of the 56 required parking spaces (a reduction of five required spaces). Forty-four spaces would be on-site and seven spaces would be provided on the abutting property to the north at 445 Old Newport Boulevard which is developed with a vacant restaurant.
- 5. A public hearing was held on September 6, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.
- 6. At the September 6, 2012, meeting the Planning Commission denied the application request pursuant to Resolution No. 1892.
- 7. On September 19, 2012, the applicant appealed the Planning Commission's decision to deny the entitlement request to allow a reduction in the required off-street parking and to utilize an off-site parking lot for a recently renovated commercial office building that proposed a medical office use. Subsequent to the Planning Commission's action on the project, the applicant modified the project by securing the ability to renovate an off-site lot and provide the Code required parking. Therefore, the request changed to a conditional

- use permit for off-site parking rather than a conditional use permit for a parking waiver and off-site parking.
- 8. A public hearing was held on March 26, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the City Council at this meeting.
- 9. At the March 26, 2013, hearing, the City Council directed the Planning Commission to review and take action on the revised project.
- 10. A public hearing was held on April 3, 2013, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). The medical use would occupy an existing general office building and utilize existing parking lots that are being renovated with a negligibile expansion of use.

#### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.40.100 B. (Off-Site Parking) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for off-site parking are set forth:

#### Finding

A. The parking facility is located within a convenient distance to the use it is intended to serve.

#### Facts in Support of Finding

1. The off-site parking spaces will be located on the property immediately to the north, abutting the subject property.

#### Finding

B. On-street parking is not being counted towards meeting parking requirements;

#### Facts in Support of Finding

1. None of the spaces counted to provide the minimum required parking for the medical use are on-street.

#### Finding

C. Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area;

#### Facts in Support of Finding

- 1. The off-site parking is directly abutting the proposed medical office lot to the north. The circulation of the on-site and off-site parking has been reviewed by the City Traffic Engineer. A pedestrian and disabled accessibility path of travel is provided between the abutting properties which has been reviewed by the City Traffic Engineer and the Building Division, and a final approval will be required prior to permit issuance.
- 2. The proposed medical use and off-site parking lot requires approval by the City Traffic Engineer prior to permit issuance and any future changes will require additional review and approval by the City Traffic Engineer.

#### **Finding**

D. The parking facility will be permanently available, marked, and maintained for the use it is intended to serve:

#### Facts in Support of Finding

- There is a recorded Reciprocal Parking Easement Agreement between the subject property and 445 Old Newport Boulevard. This agreement allows reciprocal parking for the medical office use and for the restaurant use, with the office using the parking on the restaurant site during the daytime when the restaurant is closed and the restaurant using the office site at night when the medical office is closed. The restaurant is currently vacant.
- 2. A condition of approval requires that the applicant notify the City of any changes to the off-site parking lot such as the re-opening of the restaurant or the implementation of a use with the same hours as the medical office, or a termination or default of the existing Reciprocal Parking Easement Agreement. Upon such notification, the Community Development Director can determine if an alternative location for off-site parking spaces is needed or a reduction of the medical office use in proportion to the parking spaces lost is required.

Pursuant to Section 20.40.100 A., the Planning Commission may approve or conditionally approve a conditional use permit for these types of parking requests only after first finding all of the following per Section 20.52.20 (Conditional Use Permits):

#### **Finding**

E. The use is consistent with the General Plan and any applicable specific plan;

#### Facts in Support of Finding

1. The property is designated with a General Plan land use of General Commercial Office (CO-G) which is intended to provide for administrative, professional, and medical offices with limited accessory and retail uses. The proposed medical office use is consistent with the intent and goals of this designation.

#### <u>Finding</u>

F. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

#### Facts in Support of Finding

1. The property has a Zoning designation of Office General (OG) which is intended to provide areas for administrative, professional, and medical offices with limited retail uses. The proposed medical office use is consistent with the intent of this designation.

#### **Finding**

G. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;

#### Facts in Support of Finding

- 1. Old Newport Boulevard is developed with a mix of business, medical offices, and other similar uses.
- 2. The proposed vehicle circulation of the on-site lot and off-site parking lot at 445 Old Newport Boulevard have been reviewed and approved by the City Traffic Engineer.
- 3. The access to the site and the off-site parking is from Old Newport Boulevard and has been determined to be adequate for the use and is compatible with the other commercial lots in the area.

#### **Finding**

H. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and

#### Facts in Support of Finding

- 1. The on-site parking lot and the proposed 445 Old Newport Boulevard parking lot have been reviewed for adequate access and circulation for use by employees, patrons and access by emergency vehicles.
- Aisle widths and parking sizes have been reviewed for proper circulation by the City Traffic Engineer and a final review and approval is required prior to permit issuance for the medical use and the off-site parking lot.
- 3. Conditions of approval have been included with this resolution to ensure fire services and utilities are protected in place.

#### **Finding**

I. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

#### Facts in Support of Finding

1. The circulation of the final parking layout on both sites will be approved by the City Traffic Engineer prior to permit issuance for the medical use and the parking lot.

SECTION 4. DECISION.

#### NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission of the City of Newport Beach hereby approves Conditional Use Permit Application No. UP2011-011, subject to the conditions set forth in the draft resolution, which is attached hereto and incorporated by reference.
- This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED A	AND ADOPTED	THIS 3 <sup>rd</sup> DAY O	F April, 2013
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AYES:			
NOES:			

**ABSTAIN:** 

ABSE	ENT:	
BY:_	Michael Toerge, Chairman	
BY:		
	Fred Ameri, Secretary	

#### **EXHIBIT "A"**

#### CONDITIONS OF APPROVAL

#### **PLANNING**

- 1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
- 2. The development shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval).
- 3. This Conditional Use Permit may be modified or revoked by the City Council or the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare, or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
- 4. The applicant is required to obtain all applicable permits from the City Building Division and Fire Department. The construction plans must comply with the most recent, Cityadopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
- 5. Trash pick-up for 441 Old Newport Boulevard shall be scheduled outside of normal business hours because a required parking space blocks access to the trash enclosure.
- 6. The Community Development Director shall be immediately notified of any change of ownership, use or access to the property where the off-site spaces are located (455 Old Newport Boulevard), or of any termination or default of the existing Reciprocal Easement Parking Agreement between the parties.
- 7. Upon notification that the agreement for the required off-site parking has terminated or access to those spaces is no longer available, the Director shall establish a reasonable time in which one of the following shall occur:
  - a. Substitute parking is provided that is acceptable to the Community Development Director; or
  - The size or capacity of the medical office use is reduced in proportion to the parking spaces lost.
- 8. Occupancy of the medical office building is not permitted until the off-site parking lot at 445 Old Newport Boulevard has received all of the required permits and has been improved to accommodate no less than 13 parking spaces as determined by the Public Works.

- 9. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
- 10. Use Permit No. 2011-0111 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.60 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
- 11. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
- 12. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the (Old Newport Medical Office Building) project including, but not limited to, (Use Permit No. 2011-011) and the determination that the project is exempt under the requirements of the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
- 13. New signs or changes to existing signs shall comply with sign regulations required in Zoning Code Section 20.42 (Sign Standards), as well as City Standard 110-L to ensure adequate site distance.

#### PUBLIC WORKS/UTIILITIES

- 14. All improvements shall be constructed as required by Ordinance and the Public Works Department.
- 15. Reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels and curb and gutter along the Old Newport Boulevard frontage.
- 16. All existing drainage facilities in the public right-of-way, including the existing curb drains along Old Newport Boulevard frontage shall be retrofitted to comply with the City's on-site non-storm runoff retention requirements.
- 17. An encroachment permit is required for all work activities within the public right-of-way.

- 18. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
- 19. All on-site drainage shall comply with the latest City Water Quality requirements.
- 20. Parking spaces and drive aisles shall be per City Standards STD-805-L-A and STD-805-L-B.
- 21. The existing private trees along the Old Newport Boulevard frontage on 441 Old Newport Boulevard are overgrown into power lines and adjacent property. These trees shall be trimmed back behind the property line at all times or removed.
- 22. The hedge along the North property line of 441 Old Newport Boulevard is encroaching into the Old Newport Boulevard public right-of-way/sidewalk. This hedge shall be trimmed back behind the property line at all times.
- 23. The applicant is responsible for all upgrades to the City's utilities as required to fulfill the project's demand, if applicable.
- 24. New and existing fire services shall be protected by a City-approved double-check detector assembly and installed per STD-517-L.
- 25. New and existing commercial domestic water and landscaping meter(s) shall be protected by a City-approved reduced pressure backflow assembly and installed per STD-520-L-A.
- 26. Install new curb, gutter, sidewalk and driveway along 445 Old Newport Boulevard frontage.
- 27. All traffic signage shall comply with the current California Manual of Uniform Traffic Control Devices. All traffic striping shall comply with the current Caltrans standard plans.
- 28. Parking layout and circulation at 441 and 445 Old Newport Boulevard is subject to approval by the City Traffic Engineer prior to permit issuance for the medical use and parking lot.

# **Attachment No. PC 2**

Planning Commission Resolution of Denial September 6, 2012

#### **RESOLUTION NO. 1892**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING CONDITIONAL USE PERMIT NO. UP2011-011 FOR A REDUCTION OF THE OFF-STREET PARKING REQUIREMENT UTILIZATION OF AN OFF-SITE PARKING LOT FOR AN EXISTING COMMERCIAL OFFICE BUILDING LOCATED AT 441 OLD NEWPORT BOULEVARD (PA2011-056)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by John Bral, with respect to property located at 441 Old Newport Boulevard, and legally described as Parcel 1 of Parcel Map No. 80-719, in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 163, Pages 31 and 32 of Parcel Maps in the office of the Orange County Recorder requesting approval of a conditional use permit.
- 2. The applicant proposes a conditional use permit to reduce the required off-street parking and to utilize an off-site parking lot. The project proposes to utilize the recently renovated commercial office building (11,540 quare feet) for medical office and to provide 51 of the 56 required parking spaces (a reduction of 5 required spaces). Forty-four spaces would be on-site and seven spaces would be provided on the abutting property to the north at 445 Old Newport Boulevard which is developed with a vacant restaurant.
- 3. The subject property is located within the Office General (OG) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
- 4. The subject property is not located within the coastal zone.
- 5. A public hearing was held on September 6, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

#### SECTION 3. REQUIRED FINDINGS.

Pursuant to Section 20.40.100 (Off-Site Parking) and 20.40.110 (Adjustments to Off-Street Parking Requirements)., the Planning Commission may approve or conditionally approve a conditional use permit for an off-site parking facility and an adjustment to off-street parking requirements subject to certain findings and conditions per Section 20.52.20 (Conditional Use Permits), Section 20.40.100(B) (Off-Site Parking) and Section 20.40.110 (B) (Adjustments to Off-Street Parking). In this case, the Planning Commission was unable to make the required findings based on the following facts:

- The applicant did not provide any data such as a parking study and a parking management plan to indicate that the parking demand will be less than the required number of spaces or that other parking is currently suitable and realistically available for use.
- 2. The physical condition of the proposed off-site parking location precludes its availability for parking because the property is dilapidated with vacated buildings, ungraded areas, and overgrown landscaping.
- 3. The applicant provided a copy of a Reciprocal Easement Parking Agreement to establish the rights to use 445 Old Newport Boulevard for off-site parking. There are inconsistencies within the Reciprocal Easement Parking Agreement such as the location and the number of parking spaces. In addition, the Reciprocal Easement Parking Agreement does not establish that the off-site parking will be available permanently. Monitoring the use and requiring a reduction in the use should the parking become unavailable in the future is unrealistic and difficult to maintain.
- 4. The existing commercial office is already deficient in providing the required off-street parking for a general office use.

SECTION 4. DECISION.

### NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission of the City of Newport Beach hereby denies Use Permit No. UP2011-011.
- 2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

## PASSED, APPROVED AND ADOPTED THIS 6<sup>th</sup> DAY OF SEPTEMBER, 2012.

AYES: Ameri, Brown, Hillgren, Kramer, Myers, Toerge, and Tucker

NOES: None

ABSTAIN: None

ABSENT: None

Michael Toerge, Chairman

Fred Ameri, Secretary

# **Attachment No. PC 3**

Reciprocal Easement Parking Agreement

# This Document was electronically recorded by Investors Yorba Linda

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO AND MAIL TAX STATEMENTS TO:

Ocean View Medical Investors LLC 825 S. Barrington Avenue Los Angeles, California 90049-C/O Venture RE GROUP 2601 Hain Street, Suite 560 Irvine CA galdy Alm: John Bial Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

39.00

2007000571284 11:52am 09/19/07

Accom-1

Space above line for Recorder's use only

APN NOS. 425-271-12 and 425-271-17

This document is being recorded as an accomodation only and no liability is assumed by investors Title Company as to the validity and effect of this document.

# RECIPROCAL EASEMENT AGREEMENT (PARKING) AND RIGHT OF FIRST REFUSAL

THIS RECIPROCAL EASEMENT AGREEMENT AND RIGHT OF FIRST REFUSAL entered into this first (1<sup>st</sup>) day of July, 2005, by and between Ocean View Medical Investors LLC, a California limited liability company ("Ocean View") and Sidney Soffer, an individual ("Soffer"). The intent of the parties is to create a reciprocal easement for the benefit of both parties.

#### EXPLANATION OF THE INTENT OF THIS RECIPROCAL AGREEMENT

In order for Ocean View to enjoy full use of its property, it is necessary to convert the present "office" spaces to "Medical Offices". Because of the Newport Beach Code Requirements pertaining to parking that were revised for Medical Offices that took place and became effective during Ocean View's Escrow period for the purchase of property "B", Ocean View now has insufficient parking for the conversion from "Offices" to "Medical Offices". Soffer's property "A" has sufficient "legal" parking for Sid's Restaurant but insufficient parking from a practical standpoint. In the past, parcel "B" had sufficient required parking for its daytime hours of operation and the offices were closed at night and therefore did not use its parking except for the daytime hours. Soffer, on the other hand, had little need for additional daytime parking but had a great need for additional nighttime parking. Soffer's patrons, in most cases without owner's permission, used the empty parking spaces of parcel "B" and also the parking spaces across the

\$ 525

street as well as the available on street parking on Old Newport. To accommodate the additional parking requirements for Ocean View's conversion to "Medical Offices", Ocean View has proposed through this agreement to have the use for parking the additional required vehicles on the rear of Soffer's "A" lot during the daytime hours. In exchange, Ocean View offers the nighttime use of its unused parking for Soffer's use. In addition, Ocean View has offered and proposes through this agreement to pave, provide required lighting and maintain the now unused and undeveloped rear of property "A". Ocean View's proposal is for a period of forty-five (45) years. This will encumber Soffer's property beyond any reasonable foreseeable time, but it has been discussed between Ocean View and Sid Soffer that the best future use for Soffer's "A" property would be to combine it with one of the adjoining properties. The property to the North is completely developed with a new building and has all of the required parking, and although has offered to purchase Soffer's "A" parcel, because of the additional requirement for parking on Ocean View's parcel "B", Ocean View would be the logical purchaser. It is likely, and expected that Soffer would therefore receive more than market value from Ocean View. It is foreseen by Soffer that the additional money above fair market value that Ocean View would pay Soffer should be fair compensation for Soffer's inability to further develop his underdeveloped property during the forty-five-(45) year period that Ocean View proposes.

#### WITNESSETH:

WHEREAS, Ocean View is the owner of a fee simple estate in that certain parcel of real property located in the County of Orange and State of California more particularly described in Exhibit B attached hereto and incorporated herein (said parcel being hereinafter referred to as "Parcel B"); and

WHEREAS, Soffer is the owner of a fee simple estate in that certain parcel of real property located in the County of Orange and State of California more particularly described in Exhibit A attached hereto and incorporated herein (said parcels being hereinafter referred to as "Parcel A") which Parcel B is adjacent to Parcel A; and

WHEREAS, the parties hereto desire to enter into this Reciprocal Easement Agreement for the joint use of walking, parking, and driving areas in Parcel A and Parcel B, as more particularly shown on the site plan attached hereto as Exhibit C (the "Site Plan") and for the joint rights of access to, and ingress and egress and surface water drainage over and across such areas;

NOW THEREFORE, in consideration of the mutual benefits to be realized by such joint use, the mutual agreements set forth herein the parties hereto do hereby agree as follows:

1. Ocean View does hereby establish, give, grant, and convey to Soffer, his respective successors, successors-in-title, and assigns, and the tenants, customers, employees, and invitees of such parties, a non-exclusive easement appurtenant to Parcel A for passage and use for the purpose of ingress and egress to and from Parcel A over Parcel B, and for the purpose of walking upon and driving and parking vehicles upon and across all those sidewalks, entrances, drives, lanes, and parking areas in Parcel B which are now or may hereafter from time to time be used for pedestrian and vehicular traffic and parking as is not within the building area shown on the Site Plan which non-exclusive easement is limited

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solely to the hours between 7:00 p.m. and 3:00 a.m. each day.

- 2. Soffer does hereby establish, give, grant, and convey to Ocean View, its successors, successors-in-title, and assigns and the tenants, customers, employees, and invitees of such parties, a non-exclusive easement appurtenant to Parcel B for passage and use for the purpose of ingress and egress to and from Parcel B over Parcel A for the purpose of walking upon and driving and parking for twenty-four (24) full-sized vehicles upon and across all those sidewalks, entrances, drives, lanes, repair the wall, and parking areas in Parcel A which are now or may hereafter from time to time be used for pedestrian and vehicular traffic and parking as is not within the building area, if any, shown on the Site Plan and is limited to the rear portion of Parcel A shown on the site plan.
- 3. In connection with the grant of the reciprocal easements contained herein, and in order to make such easements effective for the purposes contained, Ocean View and Soffer do further agree as follows:
  - (a) All buildings constructed on Parcel B shall be constructed entirely within the area shown on the Site Plan as "Building Area -Parcel B." At all times during the term of this Agreement except as long as there is sufficient parking as per City code and regulation without affecting the reciprocal parking number available to both parcels, Parcel B shall contain paved parking spaces for at least 35 full-sized automobiles and passenger trucks, subject to reduction in such number by virtue of condemnation or eminent domain. All driveways and entrance ways on Parcel B which are crosshatched on the Site Plan shall be constructed and maintained by the owner of Parcel B, subject to closings or takings by governmental authorities.
  - (b) All buildings constructed on Parcel A shall be constructed entirely within the area shown on the Site Plan as "Building Area -Parcel A." At all times during the term of this Agreement except as long as there is sufficient parking as per City code and regulation and without affecting the reciprocal parking number available to both parcels, Parcel A shall contain paved parking for at least 24 full sized automobiles and passenger trucks, subject to reduction in such number by virtue of condemnation or eminent domain. All driveways and entranceways on Parcel A which are crosshatched on the Site Plan shall be constructed and maintained by the owner of Parcel A, subject to closings or takings by governmental authorities.
  - (c) No party hereto shall, at any time prior to the termination of the easements herein granted, erect or construct, or cause to be erected or constructed, any fence, wall, curb, or other barrier which would in any manner interfere with or restrict the full and complete use and enjoyment by any party of the easements herein granted provided, however, that either party may construct or maintain a fence, wall, curb or other barrier on the common boundary line between Parcel A and Parcel B so long as there remains other methods of ingress and egress to both Parcel A and Parcel B which will ensure the full and complete use and enjoyment of the easements herein granted.

- (d) Ocean View does hereby agree to pave the rear portion of Parcel A for the purpose of creating additional parking stalls, to be used by Parcel B. To the extent the City requires additional lighting for the rear portion of Parcel A, Ocean View shall pay for the cost of additional lighting.
- 4. Each party hereby grants and conveys to the other party, its successors, successors-intitle, assigns, or tenants, at any time and from time to time during the term of this Agreement, the right, but not the obligation, to enter upon the other party's parcel or parcels for the purpose of constructing, installing, and maintaining the parking lot, driveways, sidewalks, and lighting as more particularly shown on the Site Plan.
- 5. The parking lot, sidewalks, driveways, and lighting located on Parcel A and Parcel B shall be maintained in good order and repair by the respective owners of such Parcels at all times during the term of this Agreement, including striping, snow, ice and trash removal, except for the rear portion of Parcel A, as shown on the Site Plan, to be maintained by the owner of Parcel B. The owner of each of such Parcels shall keep the parking lot located thereon lighted during the hours of business maintained by any tenant or business enterprise located on such Parcel or the other Party's Parcel.
- 6. The restrictions and agreements granted herein shall terminate upon the earlier to occur of (i) January 1, 2050; or (ii) expiration of twelve (12) months after the last day on which Parcel A is used for a commercial building (it being understood that construction of a medical office building shall constitute a commercial office building use) and the entry of a final order by a court of competent jurisdiction that such easements, restrictions, and agreements are no longer necessary for the protection of the respective property owners considering the uses then being made of the respective parcels.
- 7. The easements, restrictions, and agreements provided for herein shall be effective upon execution of this Reciprocal Easement Agreement by the parties hereto. The easements provided for herein shall run with the land and shall constitute a use for reciprocal benefits to and burdens upon Parcel A and Parcel B. The easements provided for herein shall inure to the benefit of and be binding upon the respective successors, successors-in-title, assigns, heirs, and tenants of each party hereto and the customers, employees, and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership of Parcel A or Parcel B, or any of them, or by any change of use, demolition, reconstruction, expansion, or other circumstances, except as specified herein. The agreement and undertakings by each party hereto shall be enforceable by action for specific performance, it being agreed by both parties hereto that an action for damages would not be an adequate remedy for a breach of this Reciprocal Easement Agreement.
- 8. This instrument is not intended to, and should not be construed to dedicate the said easement areas to the general public, nor shall this instrument be construed to restrict the use and development of Parcel A or Parcel B, except as stated herein. Without limiting the generality of the foregoing and subject to the limitations contained herein, Ocean View and Soffer shall have the right to expand, alter, modify, or demolish all or part of the buildings

they propose to construct on Parcel A or Parcel B or develop said parcels in any manner they see fit, it being the intent of this instrument to grant reciprocal easements over parking, drives, sidewalks, and common areas as they exist from time to time without limiting the right of Ocean View or Soffer to alter, demolish, or redevelop said areas.

- 9. Soffer shall not sell or agree to sell Parcel A without first offering Parcel A to Ocean View. The word "sell" shall include any transfer, conveyance, assignment of all or any portion of Parcel A. Before Soffer sells or agrees to sell Parcel A, Soffer shall offer (the "First Offer") to sell Parcel A to Ocean View, in writing and on the terms and conditions substantially identical to those proposed for the sale of the Property to a third party. The First Offer shall include all the material terms and conditions contained in that which is being offered in the proposed sale to the third party including, but not limited to, the proposed purchase price (the "Proposed Price"), down payment, timing, and the name of proposed purchaser. Ocean View shall have 60 days from the date of the First Offer ("the Acceptance Period) to accept the First Offer by delivering to Soffer the acceptance on or before 5:00 p.m. on the last day of the Acceptance Period which acceptance shall be at the lesser of the Proposed Price or 115% of the Appraised Price (as hereinafter defined). If Ocean View rejects the First Offer and Soffer enters into negotiations with a third party and is otherwise willing to enter into an agreement with that party on terms substantially less favorable to Soffer than those contained in the First Offer, then Sofffer shall offer to sell Parcel A to Ocean View on those new terms by giving Grantee written notice (the "Second Offer") and Ocean View shall once again have the right to accept or reject as described above. In order to determine the "Appraised Price", within ten (10) days of the making of the First Offer (and the Second Offer, if applicable) Soffer and Ocean View shall each appoint a licensed appraiser with not less than seven (7) years of experience appraising similar properties in the southern California area. The two appointed appraisers shall, within (10) days thereof together choose a third independent appraiser with similar qualifications. appraiser shall, within 20 days of his/her appointment, determine the fair market value of Parcel A and such value shall be the "Appraised Price". Soffer shall also have the right to "put" Parcel A to Ocean View at any time by written demand (the "Put Letter") to Ocean View to purchase Parcel A at a purchase price chosen by Soffer (the "Put Price"). Ocean View then would elect to determine the Appraised Price as described above. Ocean View shall have 60 days from the date of the Put Letter ("the Acceptance Period) to determine the Appraisal Price by delivering to Soffer the acceptance on or before 5:00 p.m. on the last day of the Acceptance Period, which acceptance shall be at the lesser of the Put Price or 115% of the Appraised Price.
- 10. In the event during the duration of this Reciprocal Easement Agreement, the City of Newport Beach revises the parking requirement of 5:1,000 for medical parking to 4:1,000 for medical parking; after confirmation of the City of Newport Beach Parking Requirement as referenced above, Ocean View would submit, in writing, to Soffer notifying Soffer of the change; which at that time, at the option of either party, this Reciprocal Eastment Agreement can be cancelled.
- 11. Upon the written request of the owner of any of the Parcels, the then owner of any Parcel, or any portion thereof, shall execute and deliver, within ten (10) days after receipt of

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such request, a certificate certifying that there are no known defaults on the part of any party to this Agreement or, if there are such defaults, specifying the particulars of such defaults and the action required to remedy it and certifying that there are no setoffs or defenses to the enforcement of the terms of this Agreement, or if there are, specifying the particulars of such setoffs or defenses.

- 11. This Agreement shall be recorded in the public records of Orange County, California and shall be prior in title to any deed of trust which is now or may hereafter be placed upon any of Parcel A and Parcel B.
- 12. The recitals and explanation of the intent in this Agreement are intended solely for reference and do not modify, explain or construe any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Reciprocal Easement Agreement as of the date first above written.

"OCEAN VIEW"

Ocean View Medical Investors LLC, a California limited liability company

Napre: John Bral

Lis: Managing Member

See M

Sidney Soffer

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#### EXHIBIT "A" PARCEL A

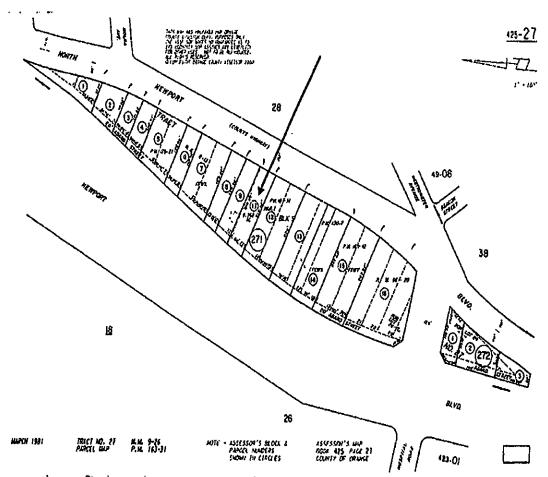
The real property located in the County of Orange, California, commonly known as 445 Newport Boulevard, Newport Beach, described as follows:

#### PARCEL 1:

Lot 13 and the Southwesterly 3.27 feet of Lot 12 in Block 9 of "Tract No. 27, Boulevard Addition to Newport Heights" in the City of Newport Beach, as shown on a map recorded in book 9, page 26 of Miscellaneous Maps, Records of Orange County, California.

#### PARCEL 2:

That portion of the Southeasterly half of the 40-foot road adjoining said Lots 12 and 13 on the Northwest, as abandoned by the order of the Board of Supervisors of Orange County on June 25, 1949, bounded Northwesterly by the Northwesterly prolongation of the Northwesterly line of the Southwesterly 3.27 feet of said Lot 12 and bounded Southwesterly by the Northwesterly prolongation of the Southwesterly line of said Lot 13.



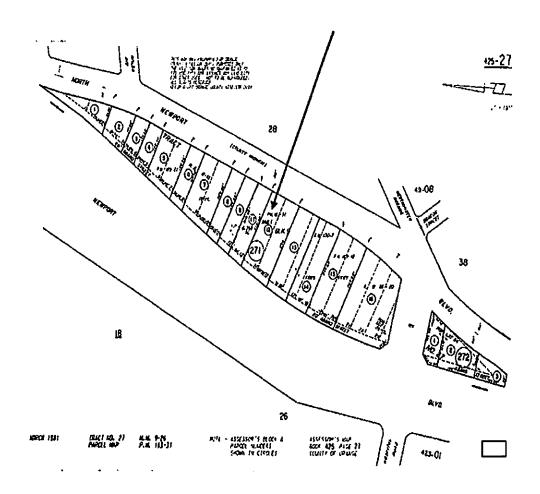


### EXHIBIT "B" PARCEL "B"

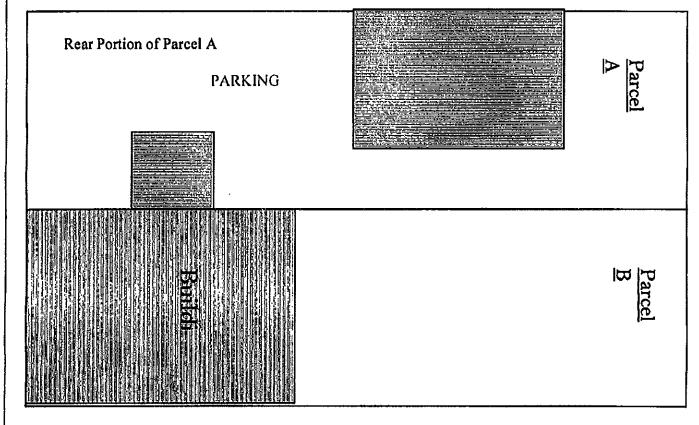
All of that certain real property situated in the City of Newport Beach, County of Orange, State of California, described as follows:

Parcel 1 of Parcel Map No. 80-719, in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 163, Pages 31 and 32 of Parcel Maps, in the Office of the County Recorder of said County.

#### APN 425-271-12







STATE OF CALIFORNIA	) }
COUNTY OF LOS ANGELES	) <b>99.</b> )
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	Notary Public
NEVADA STATE OF <del>CALIFORNIA</del> CLARIA COUNTY OF LOS ANGELES	) ) ss. )
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WITNESS my hand and of	ficial seal.
•••	Notary Public
·	NOTARY PUBLIC STATE OF NEVADA County of Clark MIGUEL, ORTIZ

# Attachment No. PC 4

Draft Resolution for Denial

#### **RESOLUTION NO. 2013-**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING CONDITIONAL USE PERMIT NO. 2011-011 TO UTILIZE AN OFF-SITE PARKING LOT AT 445 OLD NEWPORT BOULEVARD FOR AN EXISTING COMMERCIAL OFFICE BUILDING LOCATED AT 441 OLD NEWPORT BOULEVARD (PA2011-056)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by John Bral, with respect to property located at 441 Old Newport Boulevard, and legally described as Parcel 1 of Parcel Map No. 80-719, in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 163, Pages 31 and 32 of Parcel Maps in the office of the Orange County Recorder requesting approval of a conditional use permit.
- 2. The applicant proposed a conditional use permit to reduce the required off-street parking and to utilize an off-site parking lot. The project proposes to utilize the recently renovated commercial office building (11,540 square feet) for medical office and to provide 51 of the 56 required parking spaces (a reduction of five required spaces). Forty-four spaces would be on-site and seven spaces would be provided on the abutting property to the north at 445 Old Newport Boulevard which is developed with a vacant restaurant.
- 3. A public hearing was held on September 6, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.
- 4. At the September 6, 2012, meeting the Planning Commission denied the application request pursuant to Resolution No. 1892.
- On September 19, 2012, the applicant appealed the Planning Commission's decision to deny the entitlement request to allow a reduction in the required off-street parking and to utilize an off-site parking lot for a recently renovated commercial building that proposes a medical use. Subsequent to the Planning Commission's action on the project, the applicant has modified the project by securing the off-street parking with the ability to renovate an off-site lot for parking purposes through a private agreement and providing the minimum required parking spaces for the proposed medical use. Therefore, the entitlement request has changed to a use permit for off-site parking rather than a use permit for a parking waiver and for off-site parking.
- 6. A public hearing was held on March 26, 2013, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of

the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the City Council at this meeting.

- 7. At the March 26, 2013, hearing, the City Council took staff's recommendation and directed the Planning Commission to review and take action on the application which has been revised to provide the minimum required parking spaces for the proposed medical use of the commercial building through off-site parking, pursuant to Zoning Code Section 20.40.100.
- 8. A public hearing was held on April 3, 2013, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.
- 9. The subject property is located within the Office General (OG) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
- 10. The subject property is not located within the coastal zone.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). The medical use would occupy an existing general office building and utilize existing parking lots with a negligibile expansion of use.

SECTION 3. REQUIRED FINDINGS.

SECTION 4. DECISION.

#### NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission of the City of Newport Beach hereby denies Conditional Use Permit Application No. UP2011-011.
- This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

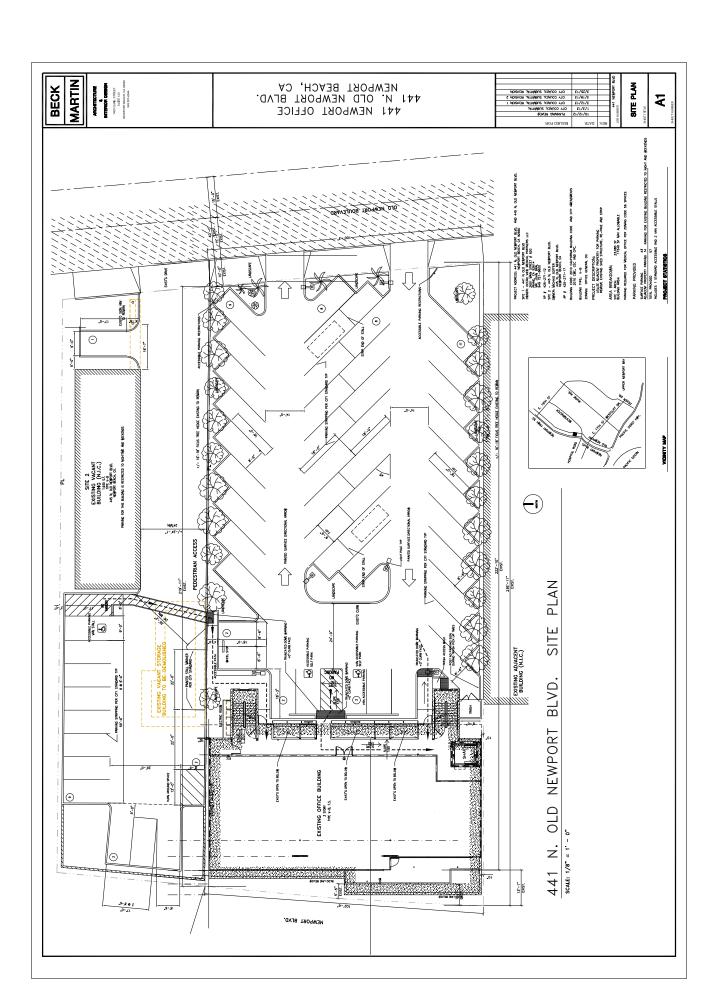
PASSED, APPROVED AND ADOPTED THIS 3<sup>rd</sup> DAY OF April, 2013.

AYES:

NOES	): -
ABST	AIN:
ABSE	NT:
BY:	Michael Toerge, Chairman
BY:	Fred Ameri, Secretary

# **Attachment No. PC 5**

Project Plans



# RANEY ZUSMAN MEDICAL GROUP Gorrespondence

CARDIOVASCULAR AND THORACIC SURGERY

447 Old Newport Boulevard, Suite 200 Newport Beach, California 92663 Ttem No. 3a
441 Old Newport Medical
Office Building
PA2011-056

Telephone (949) 650-3350

FACSIMILE (949) 650-1274

AIDAN A. RANEY, M.D.
DOUGLAS R. ZUSMAN, M.D.
GOLIN I. JOYO, M.D.
JACQUES KPODONU, M.D.
ANTHONY D. CAFFARELLI, M.D.

RECEIVED BY

April 3, 2013

City of Newport Beach Planning Commission City Council Chambers 3300 Newport Boulevard Newport Beach, CA 92663 OF NEWPORT BEACH

RE: April 3, 2013, Planning Commission Agenda Item #3 – 441 Old Newport Medical Office Building – (PA2011-056) Conditional Use Permit No. UP2011-011

#### Dear Commissioners:

We respectfully request the denial of the above referenced application for a conditional use permit. The staff report is making a favorable recommendation that the conditional use permit be approved based on temporary solutions to a permanent problem. We are requesting a denial based on the following facts:

- 1. Page 4 of the staff report discusses the Reciprocal Parking Easement Agreement with the property owner at 445 Old Newport Boulevard. On April 3, 2013 at 2:35pm we spoke with the bankruptcy attorney, Mr. Sheldon Herbert, who confirmed that the property is still in bankruptcy proceedings. While he does believe that the property will be awarded to the original owner the proceeding have not yet been finalized. Furthermore, the original owner, Sid Soffer, passed away in 2007. Therefore, the property would be subject to probate court if in fact it is awarded back to the original owner.
- 2. Neither the staff report nor the Reciprocal Parking Easement Agreement addresses the dilapidated condition of the "main" structure on the property. The restaurant that existed was closed several years ago and the building has fallen into complete disrepair (see attached photographs). There are feral cats and rodents on the property. The windows to both the restaurant and shed have been broken and were only recently boarded up. The only improvements discussed in the report relate to paving and grading as well as demolition of the storage shed. There is no discussion of main building and the potential safety hazards it poses due to the current condition of the structure.
- 3. The Reciprocal Parking Easement Agreement discusses the use of the property at 445 Old Newport as though it was a viable, functioning restaurant. In fact, no restaurant exists just an old broken-down building that requires demolition. If Sid's family were able to take ownership of the property at 445 Old Newport and they were able to open a new restaurant, their hours of

operation would need to be such that they do not interfere with the daytime parking requirements of the property at 441 Old Newport; meaning the restaurant could not open for business until after 6:00p.m. Is the City of Newport Beach going to monitor the parking situation when these hours of operation inevitably conflict?

- 4. In the staff report, Facts in Support of Finding, #2, one of the required conditions of approval relates to the applicant notifying the City if there are any changes to the off-site parking lot. If these changes occur after the property at 441 Old Newport has long-term lease agreements in place, how will the City enforce the reduction of medical office use in proportion to the lack of parking spaces?
- 5. If the property at 445 Old Newport is improved, where will all the additional cars park during the construction term?

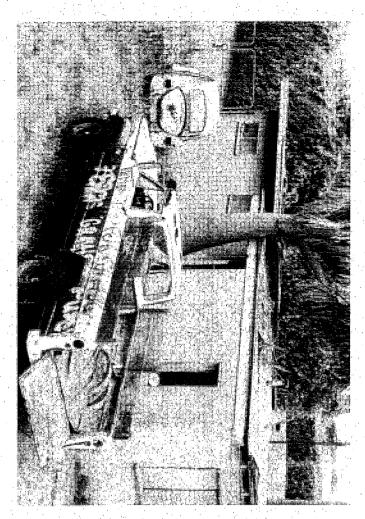
As owners of the property at 447 Old Newport Boulevard, we are very concerned that our parking lot will be negatively impacted if this permit is approved. We are requesting that the applicant be held to the same requirements for parking as the other operating businesses in the area. Granting approval of the applicant's request for this conditional use permit would provide a temporary solution favoring the property at 441 Old Newport Boulevard while creating a permanent problem for the surrounding property owners that have complied with the parking requirements the City of Newport Beach. We urge you to reconsider the staff recommendation and require 441 Old Newport to remain commercial, not medical or find a parking solution that is permanent and without conditions.

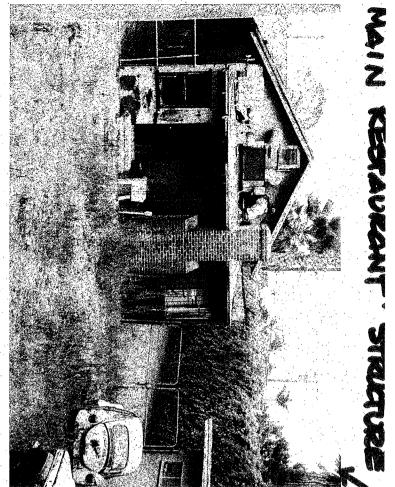
Thank you for your time.

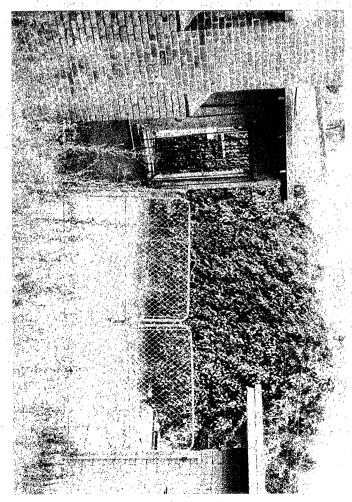
Sincerely,

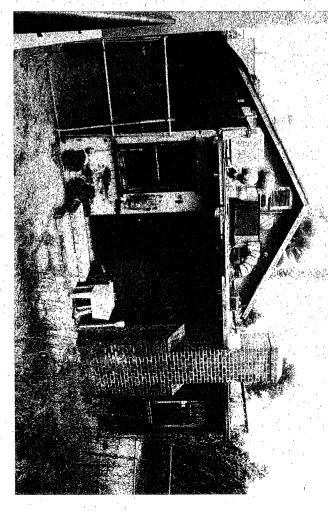
Aidan A. Raney, M.D.

Ann G Ranev



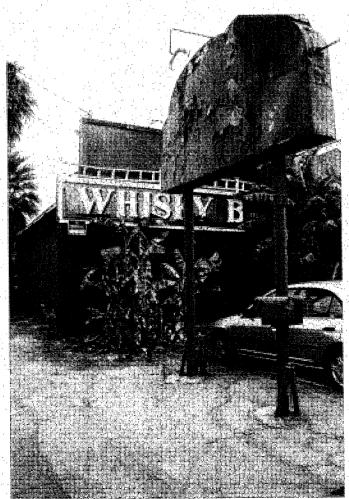














# CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

April 3, 2013 Meeting Agenda Item 4

**SUBJECT:** Knight Residence (PA2013-044)

312 Hazel Drive

Ou Residence (PA2013-043)

316 Hazel Drive

APPLICANT: Diane Knight and Honzen Ou

**PLANNER:** Makana Nova, Assistant Planner

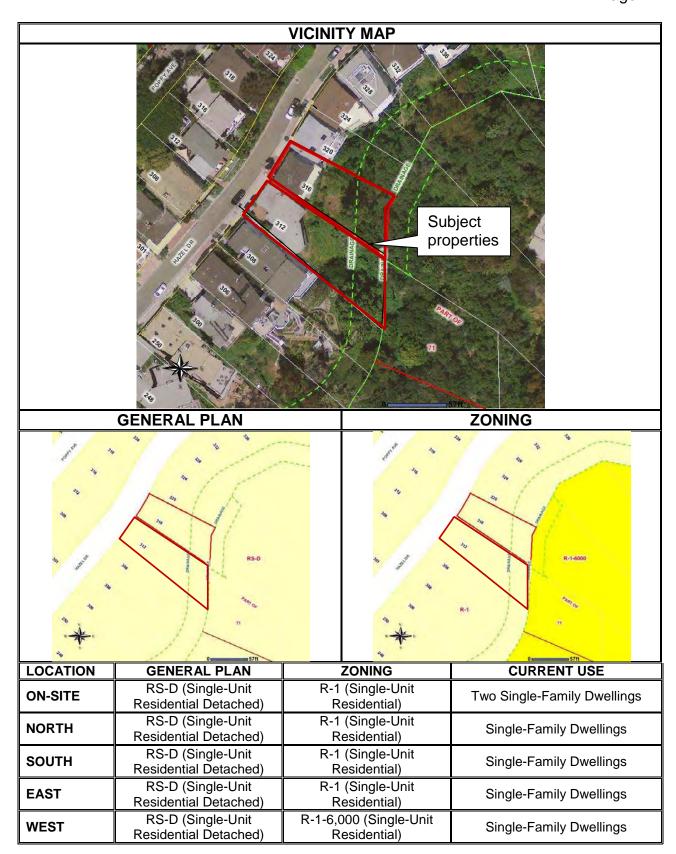
(949) 644-3249, mnova@newportbeachca.gov

#### PROJECT SUMMARY

Appeals of the Community Development Director's determination of the canyon development stringlines pursuant to General Plan Policy NR23.6 (Canyon Development Standards) and Coastal Land Use Plan Policy 4.4.3-18 for two single-family residential properties adjacent to Buck Gully.

#### **RECOMMENDATION**

- 1) Conduct a de novo public meeting;
- 2) Adopt Resolution No. \_\_\_ modifying the decision of the Community Development Director and establishing canyon development stringlines for principal and accessory structures at 312 Hazel Drive pursuant to General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18 (Attachment No. PC 1); and
- 3) Adopt Resolution No. \_\_\_ modifying the decision of the Community Development Director and establishing canyon development stringlines for principal and accessory structures at 316 Hazel Drive pursuant to General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18 (Attachment No. PC 2).



#### **INTRODUCTION**

#### **Project Setting**

The subject properties are located within Old Corona del Mar on Hazel Drive south of East Coast Highway. The neighborhood is characterized by single-family and two-unit residential structures. The adjacent properties are currently developed with single-family residences.

The subject properties are adjacent to each other and slope downward from Hazel Drive into Buck Gully. Buck Gully is considered a coastal canyon and is characterized by vegetation, habitat, and a drainage feature that flows to the Pacific Ocean at the bottom of a ravine. Photos of the sites are provided as Attachment No. PC 3.

#### 312 Hazel Drive - Knight Residence

The 7,546-square-foot property was initially developed in 1953 with a 1,540-square-foot single-family residence. On January 10, 2008, the Planning Director issued a letter detailing development limits based on interim criteria created by the City to implement the 2006 General Plan prior to update of the Zoning Code (Attachment No. PC 4). The interim criteria were eliminated upon adoption of the Zoning Code update in 2010. The letter did not address General Plan Policy NR23.6 (Canyon Development Standards) or Coastal Land Use Plan Policy 4.4.3-18, nor did it establish a predominant line of existing development (PLOED) or canyon development stringlines at that time. A building permit was issued on August 17, 2009, consistent with the Planning Director's guidance (Attachment No. PC 5). The building permit subsequently expired on January 31, 2011.

#### 316 Hazel Drive - Ou Residence

The 5,661-square-foot property was initially developed in 1949 with a 954-square-foot single-family residence. Construction plans for a new single-family residence were submitted on May 11, 2009, and a building permit was issued on May 24, 2010, (Attachment No. PC 6). Permits were issued based upon the existing development pattern and the anticipated development that had been permitted at 312 Hazel Drive. The building permit associated with 316 Hazel Drive was cancelled on February 9, 2012, at the request of the applicant.

### Community Development Director's Determination

Mr. Honzen Ou, property owner of 316 Hazel Drive, is considering the sale of his lot and inquired if the City would issue permits for the development previously permitted in 2010. After thorough review of the previously approved plans and the existing development pattern of abutting lots, the Community Development Director determined that the plans were not consistent with General Plan Policy NR23.6 (Canyon

Development Standards) and Coastal Land Use Plan Policy 4.4.3-18. The letter also included a figure showing canyon development stringlines that were determined to be consistent with General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18 (Attachment No. PC 7).

Ms. Diane Knight, property owner of 312 Hazel, is also considering the sale of her property, and a prospective buyer inquired if the City would reissue permits for the previously permitted construction. Again, after a thorough review of the previously approved plans and the existing development pattern of abutting lots, the Community Development Director determined that the previous plans were not consistent with General Plan Policy NR23.6 (Canyon Development Standards) and Coastal Land Use Plan Policy 4.4.3-18. Additionally, the letter included a figure showing canyon development stringlines that were determined to be consistent with General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18 (Attachment No. PC 8).

As stated above, an interim criterion was utilized to establish the development limits in 2008, which was eliminated with adoption of the Zoning Code update in 2010. Therefore, development potential is determined by applying the General Plan and Coastal Land Use Plan policies.

### **Appeals**

On February 25, 2013, Honzen Ou, filed an appeal (Attachment No. PC 9) of the Community Development Director's determination for 316 Hazel Drive. On February 28, 2013, Diane Knight, property owner of 312 Hazel Drive, joined Mr. Ou's appeal (Attachment No. PC 10). Staff notes that the Planning Commission is not bound by the Community Development Director's decision and is not limited to the issues raised in the appeal.

### **DISCUSSION**

Both lots are designated RS-D (Single-Unit Residential Detached) by the General Plan Land Use Element. The properties are designated RSD-A (Single-Unit Residential Detached) by the Local Coastal Program, Coastal Land Use Plan. Both lots are within the R-1 (Single-Unit Residential) Zoning District, allowing single-family residences with appurtenant structures and uses. Development of single-family residences on these lots does not require Coastal Development Permits provided the development is consistent with Categorical Exclusion Order E-77-5.

Canyon development setbacks or stringlines are established to protect coastal canyons as a natural and visual resource. Natural Resources Goal NR23 of the General Plan, relating to visual resources, provides:

"Development respects natural landforms such as coastal bluffs."

Several policies of the General Plan support Goal NR23, three of which are directly applicable to development along coastal canyons.

1. General Plan Policy NR23.1 (Maintenance of Natural Topography) provides:

"Preserve cliffs, canyons, bluffs, significant rock outcroppings, and site buildings to minimize alteration of the site's natural topography and preserve the features as a visual resource. (Imp 2.1)"

This policy recognizes coastal canyons, including Buck Gully, as a visual resource and emphasizes the consideration of topography and natural landforms to implement Goal NR23 of the General Plan.

2. General Plan Policy NR23.6 (Canyon Development Standards) and Coastal Land Use Plan Policy 4.4.3-18 establish the following development restriction for Buck Gully and Morning Canyon:

"Establish canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon. Do not permit development to extend beyond the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property. Establish development stringlines for principle structures and accessory improvements."

This policy requires the establishment of canyon development setbacks based upon a predominant line of existing development (PLOED). To date, the City has not established a PLOED in either Buck Gully or Morning Canyon. The establishment of canyon development setbacks is anticipated with the preparation of the Local Implementation Plan (LIP) that is currently under way. The policy prohibits development beyond stringlines drawn between development on adjacent lots.

The objective of implementing canyon development setbacks is to provide flexibility, equity, and certainty for property owners while preserving coastal canyons as a natural and visual resource.

3. General Plan Policy NR 23.7 (New Development Design and Siting), states:

"Design and site new development to minimize the removal of native vegetation, preserve rock outcroppings, and protect coastal resources. (Imp 2.1)"

This policy recognizes the need to consider natural topography in the site design process and to achieve a balance between private property development and the protection of natural resources.

#### Policy Implementation

General Plan Policy NR23.6 (Canyon Development Standards) and Coastal Land Use Plan Policy 4.4.3-18 are specific to establishment of development limits along coastal canyons. In the absence of an established PLOED for either Buck Gully or Morning Canyon, staff utilizes stringlines, as prescribed by the policies, to review development for the canyon-facing properties. A combination of techniques is typically utilized on a case-by-case basis, including the review of surveys showing structures on the subject property and adjacent properties, topographic maps, aerial photographs, photos of the subject properties, permit history, and site visits to determine the location of stringlines for principal structures and accessory improvements.

#### **Stringlines**

The development canyon stringlines established by the Community Development Director for the subject properties were drawn from the nearest adjacent corners of development of the two abutting lots. The figure to the right is a representation of the stringlines provided in Attachment Nos. PC 7 and PC 8.

For 312 Hazel Drive, the principal structure stringline was drawn between the nearest adjacent corner of the principal structures at 308 Hazel Drive

and the corner of the retaining wall at 316 Hazel Drive. The accessory improvement

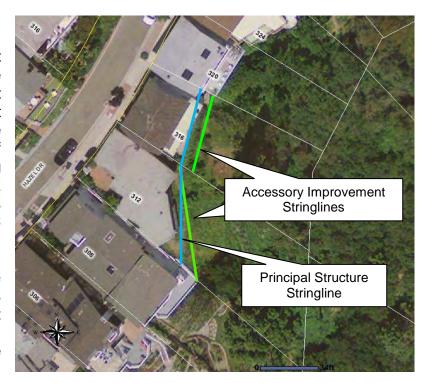


Figure 1. 2013 Community Development Director Determinations Based on Adjacent Structures

stringline was likewise established between the nearest adjacent corner of the deck line and retaining wall on 308 Hazel Drive and 316 Hazel Drive, respectively.

For 316 Hazel Drive, the principal structure stringline was identified at the location of the existing retaining wall. Since there are currently no accessory structures extending beyond the principal structures on either adjacent property, the accessory structure stringline was established as a parallel line to the principal structure development line

eight feet farther out. This accessory structure line is inline with the deck line at 320 Hazel Drive. This provides sufficient useable space for a deck or other accessory structures to extend out beyond the principal structure.

By comparison, Figure 2 depicts the lines associated with the approval of the two prior building permits. The building permit issued for 312 Hazel Drive was used to set a development line for future construction at 316 Hazel Drive.

### **Modified Stringline**

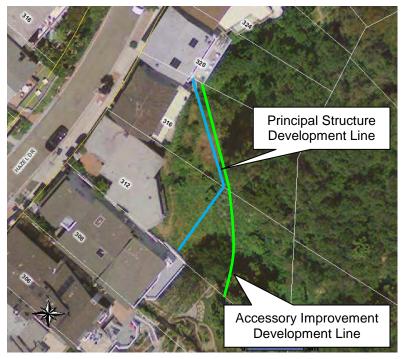
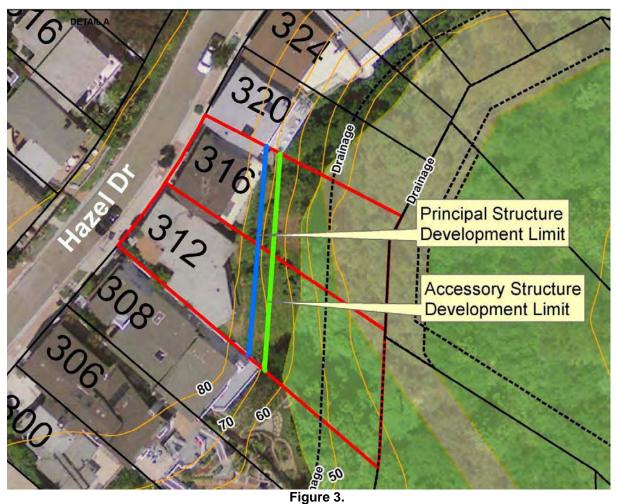


Figure 2. 2008/2009 Planning Director Determination Based on Interim Criterion

Upon further review of the General Plan and Coastal Land Use Policies, as well as existing conditions of the area, staff recommends a modification of the stringlines originally determined by the Community Development Director. The modified stringlines are drawn from existing development on either side of the combined sites (312 and 316 Hazel Drive). Staff feels that these stringlines, as identified in Figure 3 on the following page, are consistent with General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18 in that they continue to apply a stringline method of analysis. The resulting stringlines closely follow the topographic contours, appear to follow the predominant pattern of development over this portion of Buck Gully, and stay free of jurisdictional delineations, thus protecting Buck Gully as a natural and visual resource. The modified stringlines would also offer more development area than that provided by the individual stringlines identified for each lot (Attachment Nos. 7 and 8), but they would not permit the extent of development previously permitted in 2009/2010 and sought by both appellants.



Modified Stringline Recommendation

#### **Appeals**

The appellants have identified the following points in their appeals, provided as Attachment Nos. 9 and 10:

a. They were not advised of the potential change of the development limits if the building permits were to expire.

Staff notes that the property owners were sent notices from the City regarding the impending expiration of permits due to construction inactivity. The notices were routine and did not indicate whether permits could be reissued in the future for the same development. Permits are issued based upon applicable regulations and policies in effect at the time of issuance so there is never a guarantee that permits once issued can be reissued as regulations change over time.

b. The stringlines identified by staff provide a smaller building footprint and smaller future house when compared to what was previously permitted, resulting in a significant loss of future property value.

Staff acknowledges that a more restrictive development envelope would lead to a smaller building footprint that might not be valued as highly as a larger building. The previously issued permits were based on an interim criterion, which is no longer applicable.

c. The cost associated with the preparation and processing of the previous plans and permits will be lost. Preparing and processing new plans for permitting will be costly.

The City is not obligated to issue permits allowing development to the extent previously permitted based upon the issuance of those prior permits or the cost to prepare the prior plans.

d. Staff's determination using the stringline method is arbitrary, unnecessarily restrictive, and contrary to the previously established development limits.

Staff disagrees that the use of stringlines is arbitrary. The use of stringlines to regulate development is provided by General Plan and Coastal Land Use Plan policy and will be implemented until a PLOED is enacted by City ordinance or policy. In regards to the suggestion that property rights are being denied; staff disagrees. The lots on Hazel Drive along Buck Gully differ in size, shape, orientation, topography, and are developable based on these physical attributes. As a result of these physical attributes, the resulting building footprint may differ from the development pattern identified on other the portions of Buck Gully.

e. The stringlines established by the Community Development Director deprive the owner of rights enjoyed by adjoining property owners.

Property owners have a right to develop their properties consistent with applicable land use regulations, and for both of these properties, development limits are influenced by the adjacent development.

#### Summary

The City is not obligated to permit development consistent with the previously issued permits, which were based on an interim criterion which is no longer in effect. Staff recommends the establishment of canyon development stringlines for each of the subject properties as shown in Figure 3, above.

### <u>Alternatives</u>

The Planning Commission could:

- 1. Uphold the Community Development Director's original determinations, as shown in Attachment Nos. 7 and 8; or
- 2. Identify different stringlines for principal and accessory structures.

#### **Environmental Review**

The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). The Class 3 exemption includes the construction of one single-family residence. The subject appeals involve the potential for the future redevelopment of two existing single-family residences on two individual properties (one unit per property). The existing structures may be partially or fully demolished. Therefore, the proposed project qualifies for an exemption under Class 3.

#### Public Notice

Notice of these appeals was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of both sites (excluding intervening rights-of-way and waterways) including the applicants, and posted on the subject properties at least 10 days prior to the meeting. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

Makana Nova Assistant Planner V/11/10 10

Submitted by:

Brenda Wisneski, AICP, Deputy Director

### **ATTACHMENTS**

- PC 1 Draft Resolution for 312 Hazel Drive
- PC 2 Draft Resolution for 316 Hazel Drive
- PC 3 Site Photos
- PC 4 Development Limit Determination for 312 Hazel Drive dated January 10, 2008
- PC 5 Original project plans for 312 Hazel Drive
- PC 6 Original project plans for 316 Hazel Drive
- PC 7 Development Limit Determination for 316 Hazel Drive dated February 7, 2013
- PC 8 Development Limit Determination for 312 Hazel Drive dated February 15, 2013
- PC 9 Appeal Application for 316 Hazel Drive
- PC 10 Appeal Application for 312 Hazel Drive

: 07/31/12

Draft Resolution for 312 Hazel Drive

<b>RESOL</b>	UTION NO.	
	• • • • .	

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH MODIFYING THE DECISION OF THE COMMUNITY DEVELOPMENT DIRECTOR ESTABLISHING CANYON DEVELOPMENT STRINGLINES PURSUANT TO GENERAL PLAN POLICY NR 23.6 AND COASTAL LAND USE PLAN POLICY 4.4.3-18 FOR 312 HAZEL DRIVE (PA2013-044)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

- 1. On February 15, 2013, the Community Development Director identified canyon development stringlines pursuant to General Plan Policy NR23.6 (Canyon Development Standards) and Coastal Land Use Plan (CLUP) Policy 4.4.3-18 consisting of a primary structure stringline and an accessory improvements stringline for 312 Hazel Drive, and legally described as Lot 48, Block A, Tract 673.
- 2. An appeal of the Community Development Director's determination was filed by the property owner Diane Knight. The appeal requests the approval of canyon development stringlines similar to or identical to that shown on construction documents identified as Building Permit No. X2008-1618, which was issued on August 14, 2009, and expired on January 31, 2011, due to inactivity.
- The development associated with Building Permit No. X2008-1618 was determined to be consistent with interim criteria created by Ordinance No. 2007-3, which is no longer in effect.
- 4. The subject property is designated Single-Unit Residential Detached (RS-D) by the General Plan Land Use Element allowing the development of a single family residence on the property. The property is also located within Buck Gully and is subject to General Plan Policy NR23.6 (stated below) that provides development standards for the canyon.
  - "Establish canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon. Do not permit development to extend beyond the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property. Establish development stringlines for principle structures and accessory improvements."
- 5. The property is designated Single Unit Residential Detached (RSD-B) by the Coastal Land Use Plan allowing the development of a single family residence on the property. Due to the location of the site within Buck Gully, development is subject to CLUP Policy 4.4.3-18 that provides canyon development standards identical to General Plan Policy

- NR23.6. The subject property is located within the categorical exclusion area of the coastal zone.
- 6. The subject property is zoned R-1 (Single-Unit Residential) allowing the development and use of a single family residence.
- 7. A review of the goals and policies detailed in the General Plan and Coastal Land Use Plan, as well as the existing conditions, justifies modification of the Community Development Director's initial determination of the string line location, as shown in Exhibit A.
- 8. A public hearing was held on Wednesday, April 3, 2013, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting..

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

The development of the site with one, single family residence is categorically exempt from the environmental review pursuant to Section 15303 of the Implementing Guidelines of the California Environmental Quality Act. This exemption covers the new construction or conversion of small structures including a limited number of single-family homes.

#### SECTION 3. REQUIRED FINDINGS.

#### Finding:

A. Development of the subject property to the extent proposed by the appellant does not conform to General Plan Policy NR23.6 and CLUP Policy 4.4.3-18.

## Facts in Support of Finding:

- A-1. No canyon development setback based upon a predominant line of existing development has been established pursuant to General Plan Policy NR23.6 and CLUP Policy 4.4.3-18 for Buck Gully or the subject property.
- A-2. Development to the extent depicted on Building Permit No. X2008-1618 was based on Design Criterion No. 7 relating to landform alteration as established by Ordinance No. 2007-3, which is no longer in effect. Development to the extent depicted on Building Permit No. X2008-1618 would not fall within a development stringline drawn between existing development located on the adjacent properties (312 and 320 Hazel Drive) and would extend beyond said stringline.

#### Finding:

B. The development stringlines for principle structures and accessory improvements, as depicted in Exhibit A, are consistent with General Plan Policy NR23.6 and CLUP Policy 4.4.3-18.

#### Facts in Support of Finding:

- B-1. In the absence of an established predominant line of development, the stringline method is utilized as prescribed in the policies to determine the appropriate development limit. As specified in the language of the policies, the principal structure and accessory improvement stringlines are drawn from existing development located on the adjacent properties. The principal structure stringline is drawn between the nearest adjacent foundation of the existing principle structuresat 308 and 320 Hazel Drive. The accessory improvement stringline is drawn between the existing decks located on adjacent propertiesat 308 and 320 Hazel Drive.
- B-2. The subject property at 312 Hazel Drive occurs at a transition between a smaller and larger block in the development pattern along Hazel Drive. The consideration of 312 and 316 Hazel Drive together connects these two development patterns and follows the topography of the canyon to protect Buck Gully as a natural landform and visual resource per General Plan Goal NR23, "Development respects natural landforms such as coastal bluffs."

#### Finding:

C. The canyon development stringlines for principal structures and accessory improvements, as depicted in Exhibit A, are consistent with General Plan Policies NR23.1 (Maintenance of Natural Topography) and NR23.7(New Development Design and Siting).

#### Facts in Support of Finding:

- C-1. The canyon development stringlines follow the topographic contours of Buck Gully at this location and would reflect the symmetry that occurs in the second block from 312 and 336 Hazel Drive where the drainage pattern curves inward toward Hazel Drive.
- C-2. The canyon development stringlines keep structures clear of drainage easements and California Coastal Commission and California Department of Fish and Wildlife jurisdictional delineations. Establishing development limits outside of these areas is appropriate to minimize alteration of the site's natural topography, minimize physical impacts to habitat areas, and facilitate permit processing for applicants.

#### SECTION 4. DECISION.

### NOW, THEREFORE, BE IT RESOLVED:

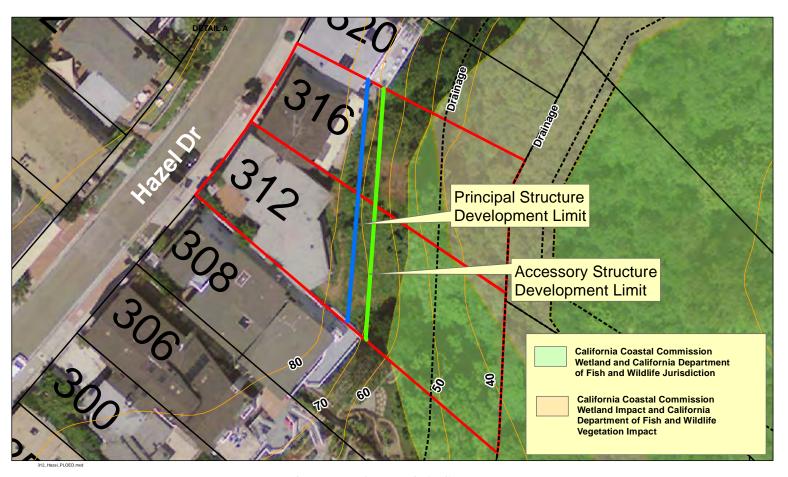
- 1. The Planning Commission of the City of Newport Beach hereby modifies the Community Development Director's decision and establishes canyon development stringlines for 312 Hazel Drive, subject to the figure set forth in Exhibit A, which is attached hereto and incorporated by reference.
- 2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 3<sup>rd</sup> DAY OF APRIL, 2013.

AYES:
NOES:
ABSTAIN:
ABSENT:
3Y:
Michael Toerge, Chairman
ov.
BY: Fred Ameri, Secretary

Planning Commission Resolution No	
Pa	ge 5 of 5

## **EXHIBIT "A"**





Canyon Development Stringline 312 & 316 Hazel Drive

Draft Resolution for 316 Hazel Drive

<b>RESOL</b>	UTION N	Ο.
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A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH MODIFYING THE DECISION OF THE COMMUNITY DEVELOPMENT DIRECTOR AND ESTABLISHING CANYON DEVELOPMENT STRINGLINES PURSUANT TO GENERAL PLAN POLICY NR 23.6 AND COASTAL LAND USE PLAN POLICY 4.4.3-18 FOR 316 HAZEL DRIVE (PA2013-043)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

- 1. On February 7, 2013, the Community Development Director identified canyon development stringlines pursuant to General Plan Policy NR23.6 (Canyon Development Standards) and Coastal Land Use Plan (CLUP) Policy 4.4.3-18 consisting of a primary structure stringline and an accessory improvements stringline for 316 Hazel Drive, and legally described as Lot 49, Block A, Tract 673.
- 2. An appeal of the Community Development Director's determination was filed by the property owner Honzen Ou. The appeal requests the approval of canyon development stringlines similar to or identical to that shown on construction documents identified as Building Permit No. X2009-0835, which was issued on May 24, 2010, and was cancelled on February 9, 2012, at the request of the applicant.
- 3. The development associated with Building Permit No. X2009-0835 was determined to be consistent with interim criteria created by Ordinance No. 2007-3, which is no longer in effect.
- 4. The subject property is designated Single-Unit Residential Detached (RS-D) by the General Plan Land Use Element allowing the development of a single family residence on the property. The property is also located within Buck Gully and is subject to General Plan Policy NR23.6 (stated below) that provides development standards for the canyon:
  - "Establish canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon. Do not permit development to extend beyond the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property. Establish development stringlines for principle structures and accessory improvements."
- 5. The property is designated Single Unit Residential Detached (RSD-B) by the Coastal Land Use Plan allowing the development of a single family residence on the property. Due to the location of the site within Buck Gully, development is subject to CLUP Policy 4.4.3-18 that provides canyon development standards identical to General Plan Policy

- NR23.6. The subject property is located within the categorical exclusion area of the coastal zone.
- 6. The subject property is zoned R-1 (Single-Unit Residential), allowing the development and use of a single-family residence.
- 7. A review of the goals and policies detailed in the General Plan and Coastal Land Use Plan, as well as the existing conditions, justifies modification of the Community Development Director's initial determination of the stringline location, as shown in Exhibit A.
- 8. A public hearing was held on Wednesday, April 3, 2013, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

The development of the site with a single family residence is categorically exempt from the environmental review pursuant to Section 15303 of the Implementing Guidelines of the California Environmental Quality Act. This exemption covers the new construction or conversion of small structures including one single-family home.

#### SECTION 3. FINDINGS.

#### Finding:

A. Development of the subject property to the extent proposed by the appellant does not conform to General Plan Policy NR23.6 and CLUP Policy 4.4.3-18.

#### Facts in Support of Finding:

- A-1. No canyon development setback based upon a predominant line of existing development has been established pursuant to General Plan Policy NR23.6 and CLUP Policy 4.4.3-18 for Buck Gully or the subject property.
- A-2. Development to the extent depicted on Building Permit No. X2009-0835 was based on Design Criterion No. 7 relating to landform alteration as established by Ordinance No. 2007-3, which is no longer in effect. Development to the extent depicted on Building Permit No. X2009-0835 would not fall within a development stringline drawn between existing development located on the adjacent properties (312 and 320 Hazel Drive) and would extend beyond said stringline.

#### Finding:

B. The development stringlines for principle structures and accessory improvements, as depicted in Exhibit A, are consistent with General Plan Policy NR23.6 and CLUP Policy 4.4.3-18.

#### Facts in Support of Finding:

- B-1. In the absence of an established predominant line of development, the stringline method is utilized as prescribed in the policies to determine the appropriate development limit. As specified in the language of the policies, the principal structure and accessory improvement stringlines are drawn from existing development located on the adjacent properties. The principal structure stringline is drawn between the nearest adjacent foundation of the existing principle structures at 308 and 320 Hazel Drive. The accessory improvement stringline is drawn between the existing decks located on adjacent properties at 308 and 320 Hazel Drive.
- B-2. The subject property at 316 Hazel Drive occurs at a transition between a smaller and larger block in the development pattern along Hazel Drive. The consideration of 312 and 316 Hazel Drive together connects these two development patterns and follows the topography of the canyon to protect Buck Gully as a natural landform and visual resource per General Plan Goal NR23, "Development respects natural landforms such as coastal bluffs."

#### Finding:

C. The canyon development stringlines for principal structures and accessory improvements, as depicted in Exhibit A, are consistent with General Plan Policies NR23.1 (Maintenance of Natural Topography) and NR23.7 (New Development Design and Siting).

#### Facts in Support of Finding:

- C-1. The canyon development stringlines follow the topographic contours of Buck Gully at this location and would reflect the symmetry that occurs in the second block from 312 and 336 Hazel Drive where the drainage pattern curves inward toward Hazel Drive.
- C-2. The canyon development stringlines keep structures clear of drainage easements and California Coastal Commission and California Department of Fish and Wildlife jurisdictional delineations. Establishing development limits outside of these areas is appropriate to minimize alteration of the site's natural topography, minimize physical impacts to habitat areas, and facilitate permit processing for applicants.

#### SECTION 4. DECISION.

### NOW, THEREFORE, BE IT RESOLVED:

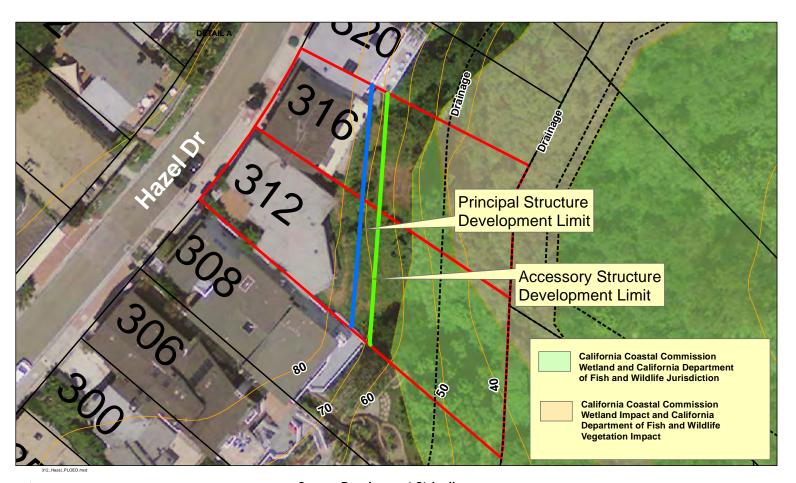
- 1. The Planning Commission of the City of Newport Beach hereby modifies the Community Development Director's decision and establishes canyon development stringlines for 316 Hazel Drive, subject to the figure set forth in Exhibit A, which is attached hereto and incorporated by reference.
- 2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 3<sup>rd</sup> DAY OF APRIL, 2013.

AYES:	
NOES:	
ABSTAIN:	
ABSENT:	
BY:	
Michael Toerge, Chairman	
BY:	
Fred Ameri, Secretary	

Planning Commission Resolution No.	
Pa	ge 5 of 5

## **EXHIBIT "A"**





Canyon Development Stringline 312 & 316 Hazel Drive

Site Photos

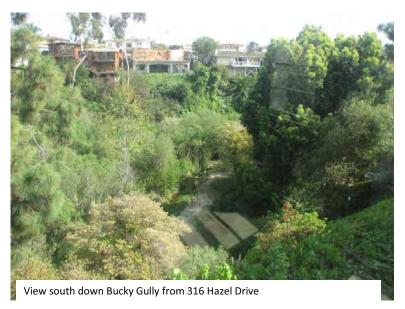




View of Buck Gully vegetation and improvements from 312 Hazel Drive

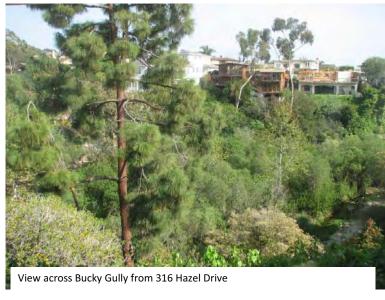


















View of adjacent development at 316 Hazel Drive from 312 Hazel Drive



View of slope below 312 Hazel Drive and adjacent to 308 Hazel Drive



View of adjacent development at 312 Hazel Drive from 316 Hazel Drive







Development Limit Determination for 312 Hazel Drive dated January 10, 2008



## CITY OF NEWPORT BEACH

### PLANNING DEPARTMENT

January 10, 2008

Deborah M. Rosenthal Bingham McCutchen LLP 600 Anton Boulevard | Suite 1800 Costa Mesa, CA 92626

RE: 312 Hazel Drive

Dear Ms. Rosenthal,

Thank you for you assistance in establishing development parameters for the proposed development at 312 Hazel Drive. As you know, Ordinance No. 2007-3 established procedures for the implementation of the General Plan during the interim period while the Zoning Code and other ordinances and regulations are being updated. Criterion No. 7 states:

Site planning should follow the basic principle of designing development to fit the features of the site rather than altering the site to fit the design of the development. Whenever possible, altering natural features such as cliffs, canyons, bluffs, significant rock outcroppings, natural vegetation should be avoided or the extent of alternation minimized. Adequate buffers should be provided to protect significant or rare biological resources.

After reviewing your exhibits, I have concluded that if the new principal structure does not extend beyond principal structure located at 308 Hazel Drive and steps down the slope as depicted in the simulation in your October 19, 2007 letter, the development will be consistent with Criterion No. 7. As for the proposed accessory structures, if these improvements are terraced as depicted in the simulation and do not extend further down the slope than the first terraced area on the 308 Hazel Drive property, which is within the 54-foot contour line, the development will be consistent with Criterion No. 7. The attached exhibit depicts the approximate line of development for the principal structure and for accessory structures.

Please note that is for purposes of interpreting Criterion No. 7 of Ordinance No. 2007-3 only. This interim ordinance will expire when the new Zoning Code is adopted. New building permit applications will have to comply with the property development regulations contained in the new Zoning Code. At this time, it is estimated that the new Zoning Code will be adopted sometime around mid-year 2008.

312 Hazel Drive January 10, 2008 Page 2 of 2

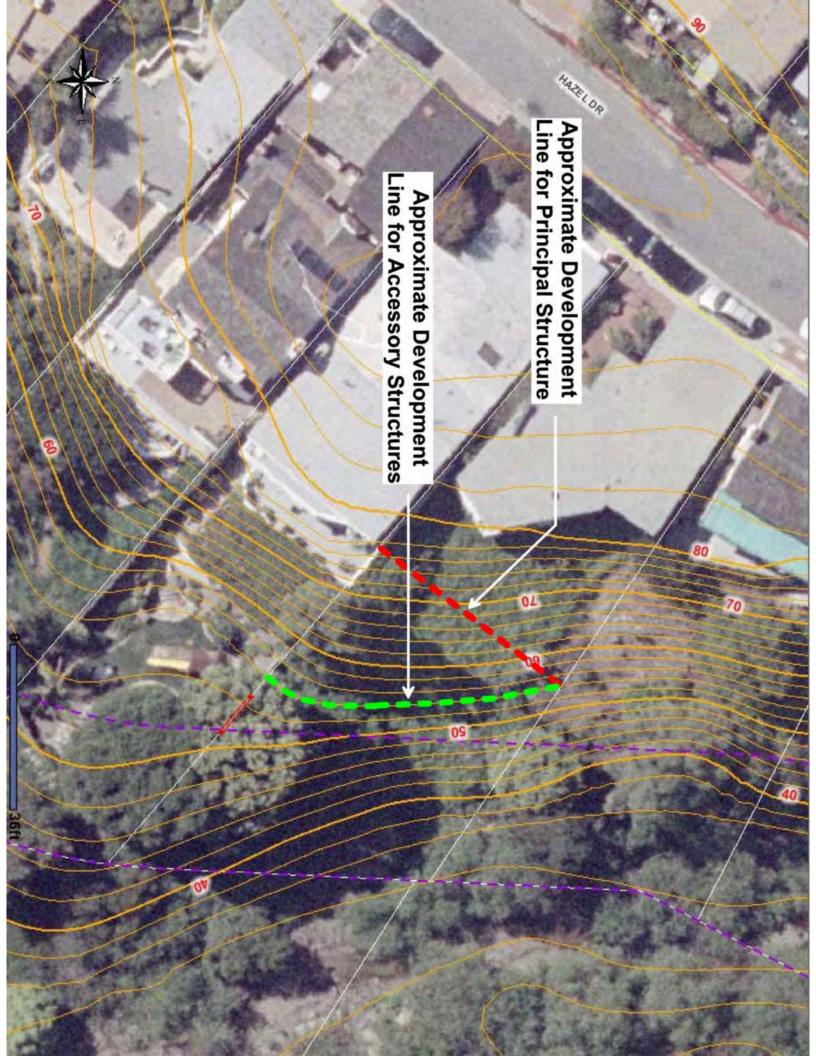
This interpretation was prompted by new direction provided to staff from members of the General Plan/LCP Implementation Committee. It involved policy issues other than those raised in your client's appeal. Therefore, I believe that it is appropriate to refund the \$600.00 filing fee, should your client choose to withdraw the appeal.

As to your request regarding compliance with other City requirements, our ability to perform an analysis was limited as we were only given a partial set of conceptual plans that were not drawn to scale. However, we did route the conceptual plans to other City departments for comments. Copies of their comments are attached and I hope that you find them useful.

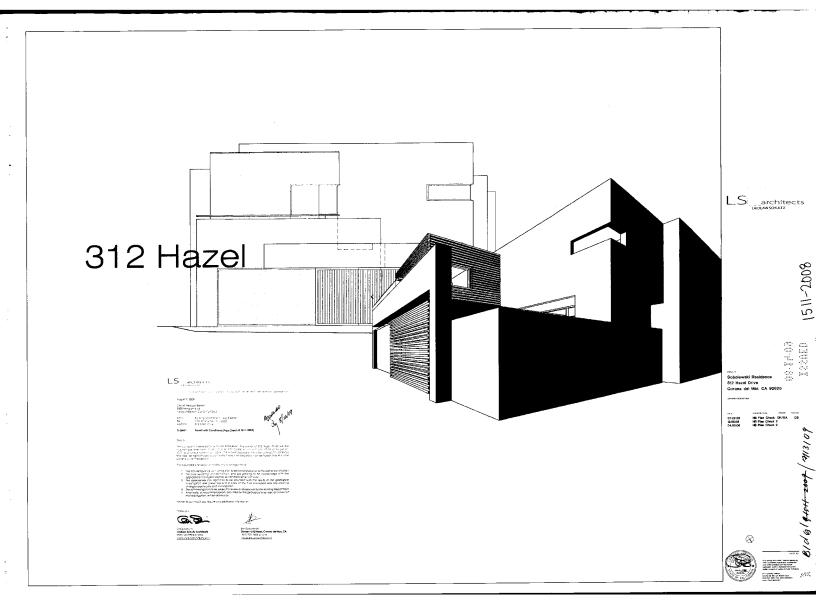
Sincerely,

David Lepo

Planning Director



Original project plans for 312 Hazel Drive



#### General Notes

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- Every exit door shall be openable from the inside without the use of a key or any special knowledge or effort. Special locking devices shall be of an approve type per Trile 19 and CBC Chapter 10.
- type par 108 18 and IDC Chepter 10.

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  All spacing in nearchous locations as defined in CRC Section 2468.3 shall be
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  Simple defections shall be provided in all seeping rooms and on required by CBC.

- When specified items are called for in the construction documents, the Contractor may submit alternate materials for approval by the Owner and the

- Subcontractors supplying heating, cooling, water healing, and lighting systems and conservation or salor devices installed in the building shall provide the dance isotractors on now to use equipment efficient

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#### Design/Build Notes esign/Bulld Electrical Notes-

- Provide a complete and fluly operational Design/Suita electrical installation as required by all applicable codes and the County of Orange Suitaling Department. The autocontracter is responsible for abbasishing at agency approvals required prior to the commencement of very commence.
- These did delay dishings. They are invalided to limply a disgrammelic scop work for use by the appropriate subcontractor in developing or Deryy/Bluic concentrations. Position of features could see substantial and other contractors violate features are fixed as stream uness a change in position is authorities that Chert. The Subcontractors in responsible for residing of all conduct and of any after non-violate components for a fully operational, set and coor completal system.
- All electrical outets to be mounted at 1°-0° A.F.F. and all switches at 3° 6° unless extension noted.

40 tumens/White or greater for general lighting in littlehers and rooms with water closels; one recessed dealing finances are IC (insulation cover) approved.

water distinct, our records only find year of C insulation court approval pelagrig/Bald Modernical Notices.

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- INAC and hat water system pipe insulation shall comply with 124-2-0312 and Table 2-03C of the energy efficiency stancards.

- The Control of the Co
- Dusts piercing with between house living orea and garage and the 26 GA, Cumstarial in the garage sealed at eges, and no openings liveo garage. Mechanical ventilation systems for tallet comportments, bathrooms, loundry ream-and similar reams that be capable of providing (5) air changes per hour circuly to the autisite.
- All HAKC againment shall be listed by an approved testing agency and be installed in accordance with that lighing.
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- All Returns one trim shall conform to the requirements of Title 24.
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- Provide adfinition for laundry room and disnesses.

- All wark shall be performed in occordance with the City of Newport and all Store, and Manicipal Authorities having judisidation over the work.
- Demotion work star comply with the ANSI A10.6 Safety Requirer Demotision.

- All demotion and removal that be prought to a natural stooping point. Any material removes by mistake or in excess of requirements shall be replaced at the Contractor's expense. Promoting materials shall be out back 1° behind addition of contractory surfaces.

## Structural Observation

Special continuous, and/or periodic structural verification and appendix is required for this project. For a complete list of these requirements, see sheets 4,001a and 54,2

Architectural Abbreviations

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#### Location Map



Detai Section i.e. Drowing 1. Sheet A.700 A.700 Elevation 1e. Crawing 1, Sheet A.300

Room Number

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#### Architectural Symbols

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Interior Elevation

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ROOM NAME Door Symbol RS: Door Subscule Sheet A.002 (B) Window Symbol RC: Window Scherule Sheet A.002 Wall hore - DC - 4-007 × +\* +\* Floor Orain Hose Sio Water 3333333333

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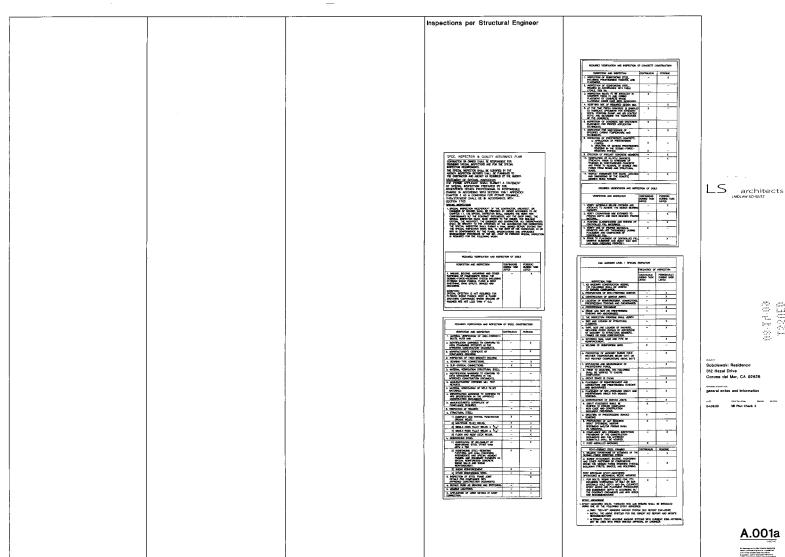
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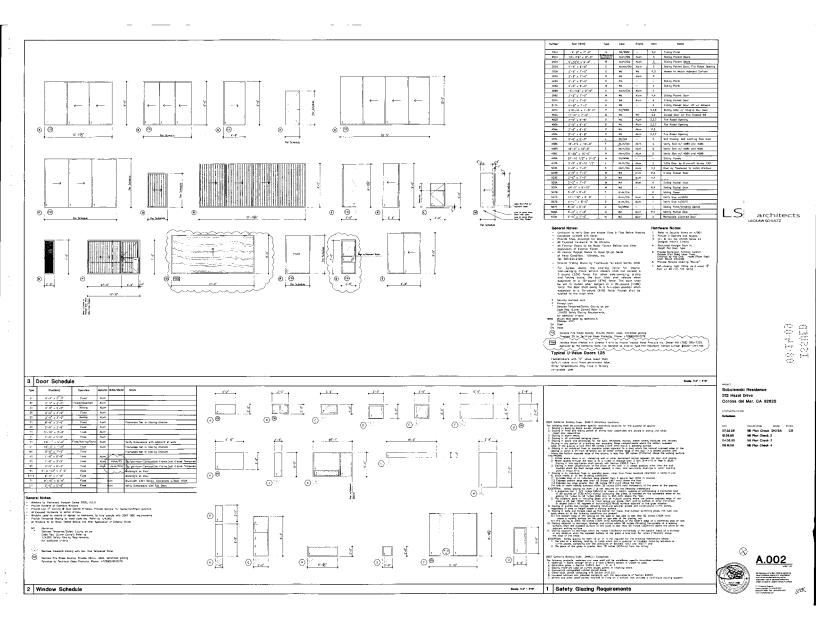
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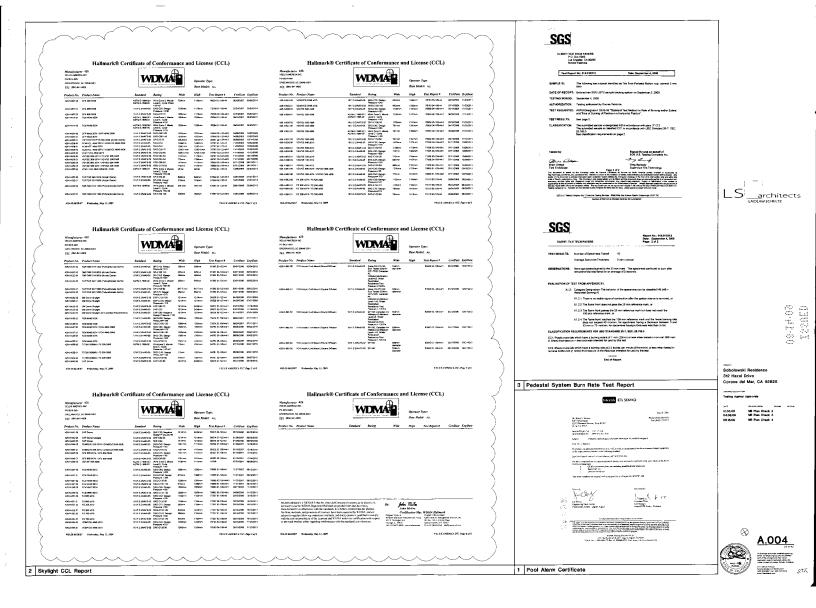


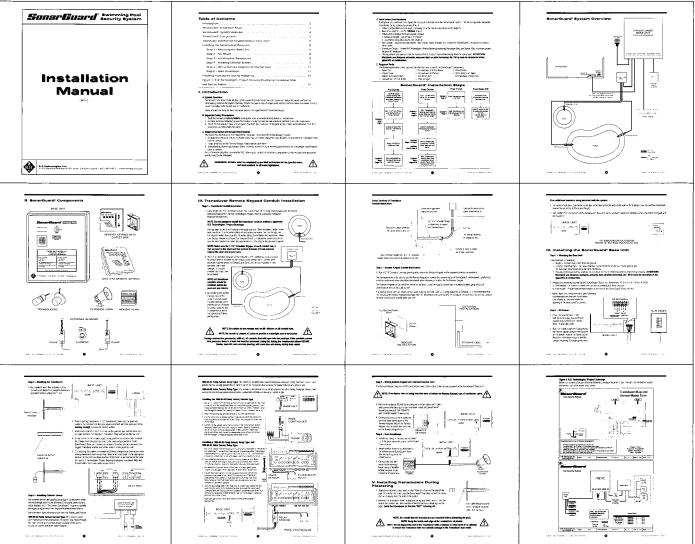


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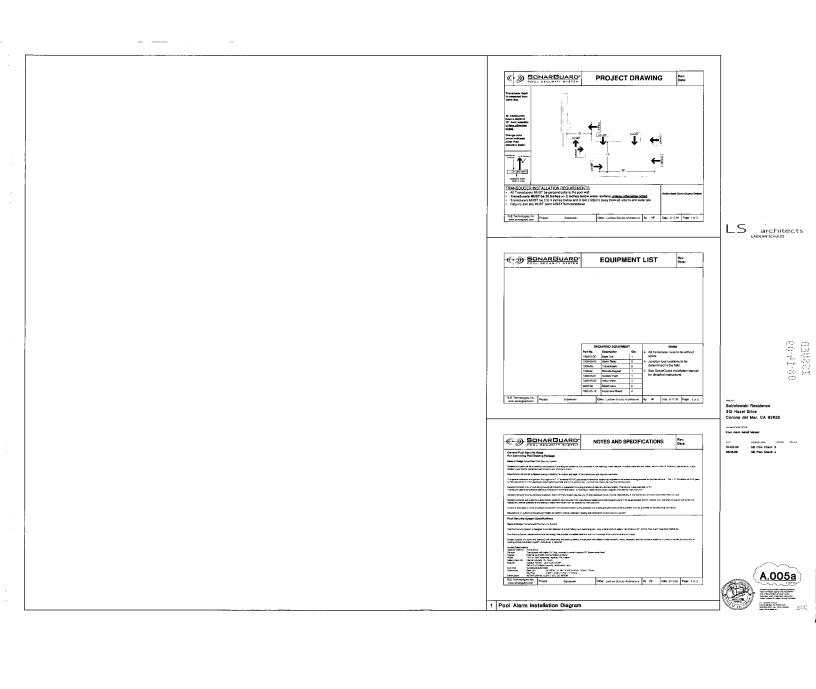
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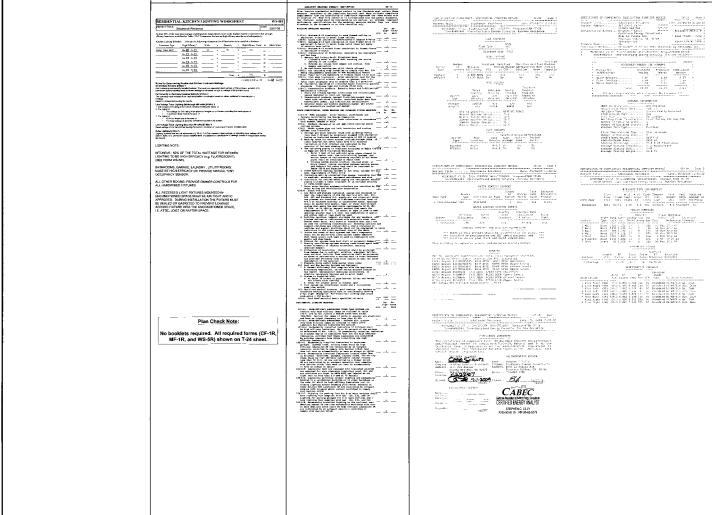
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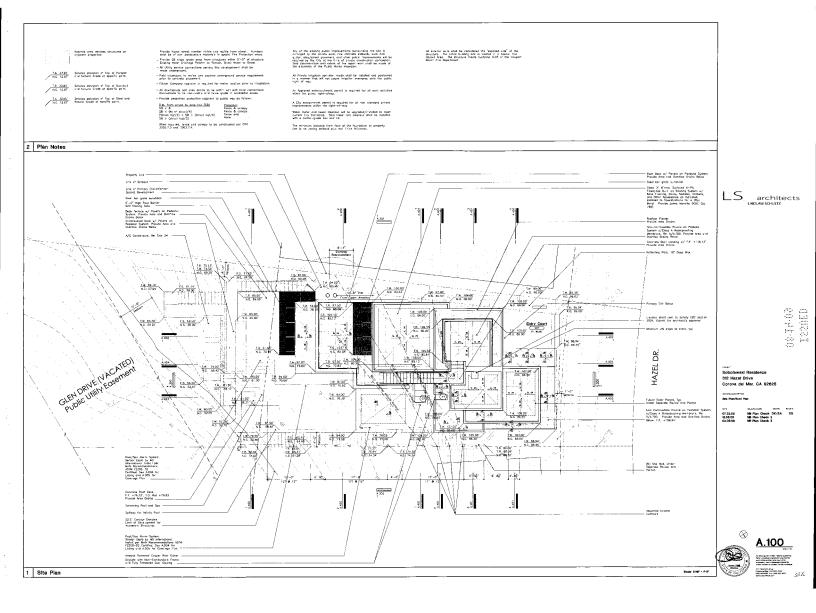
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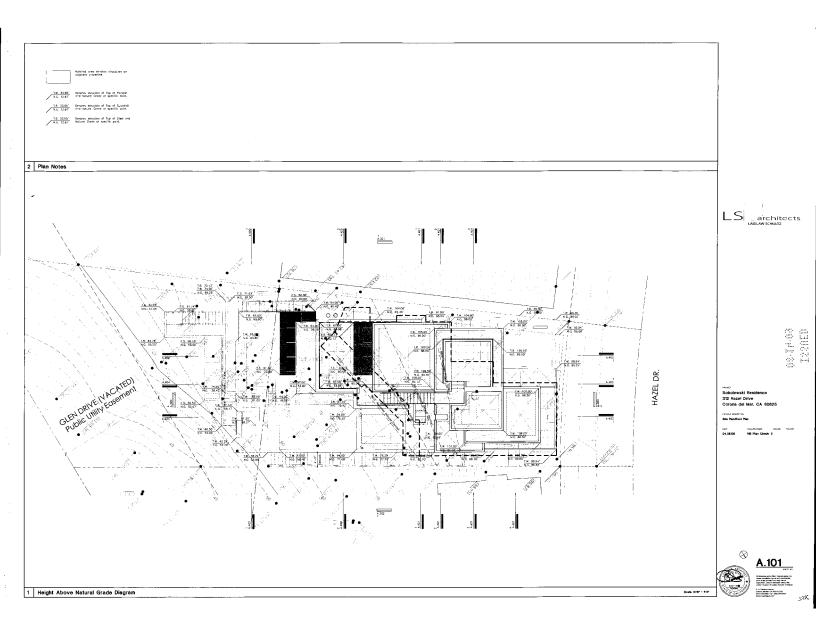
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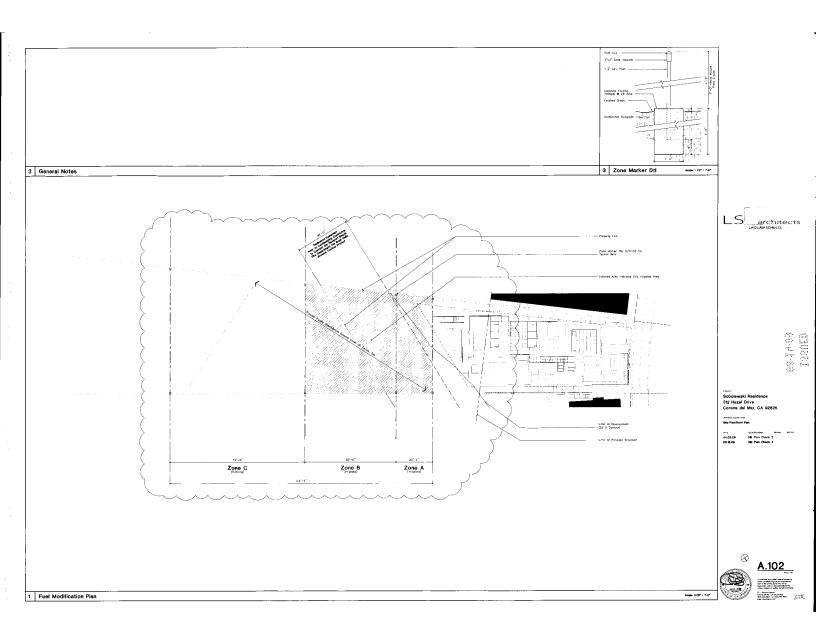
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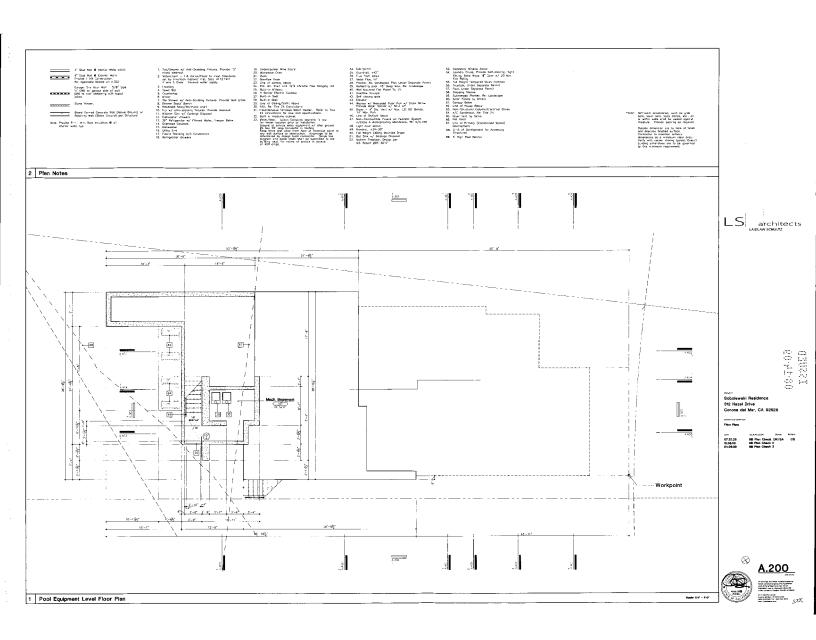
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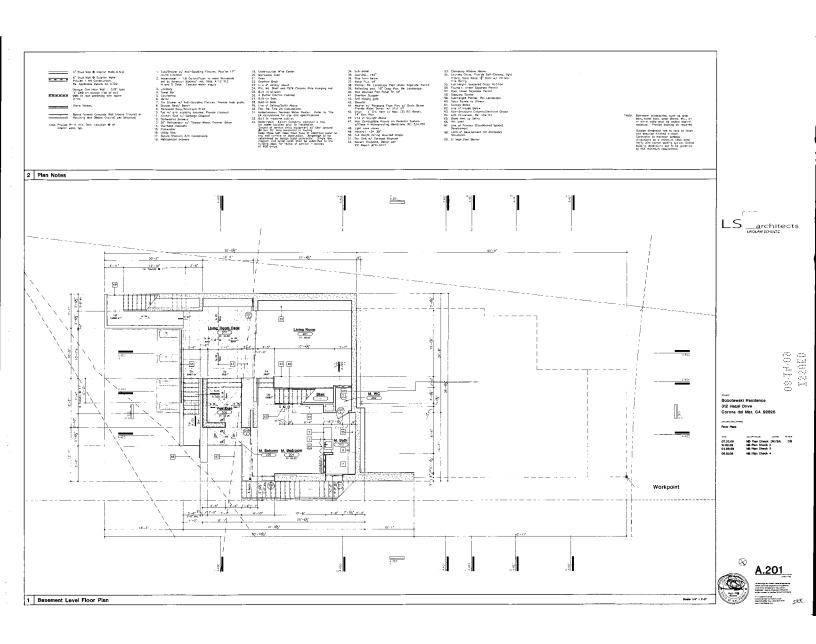
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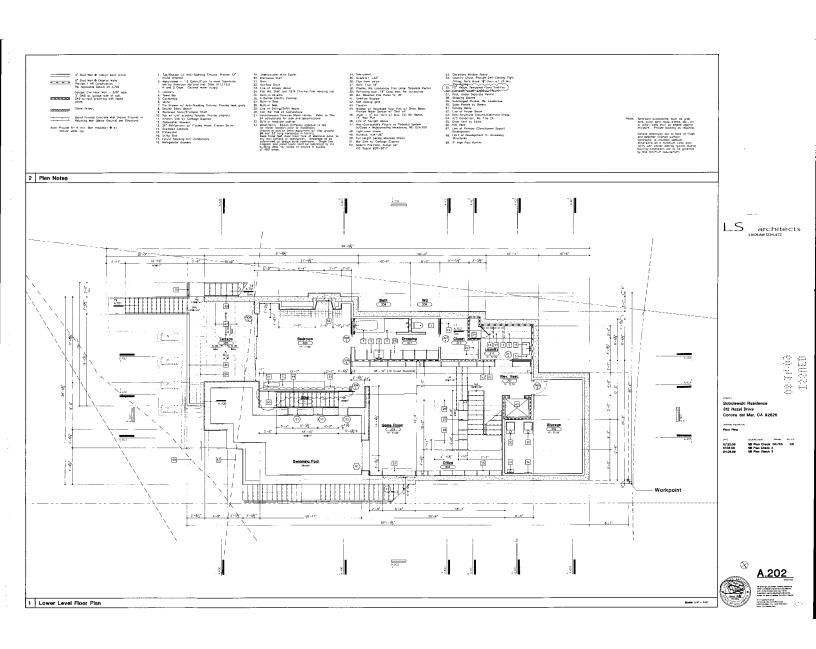


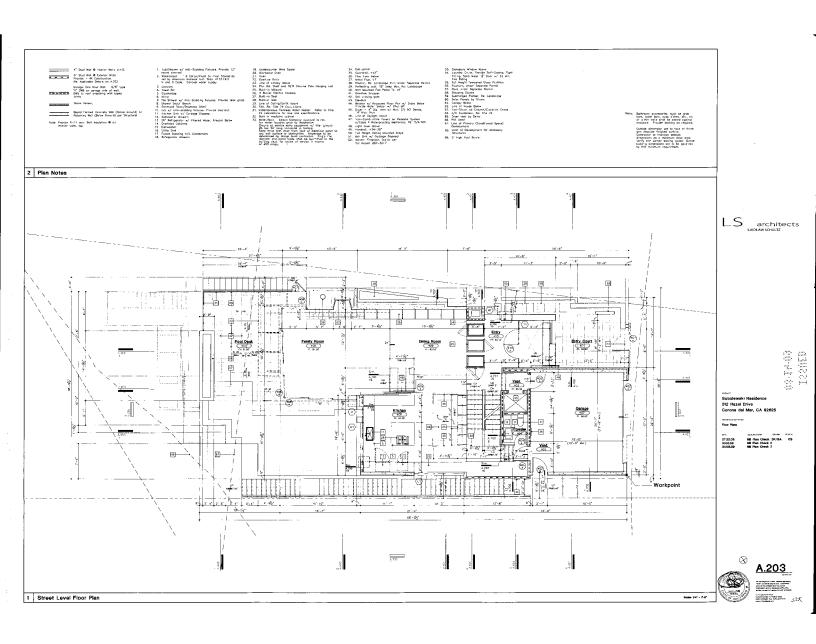


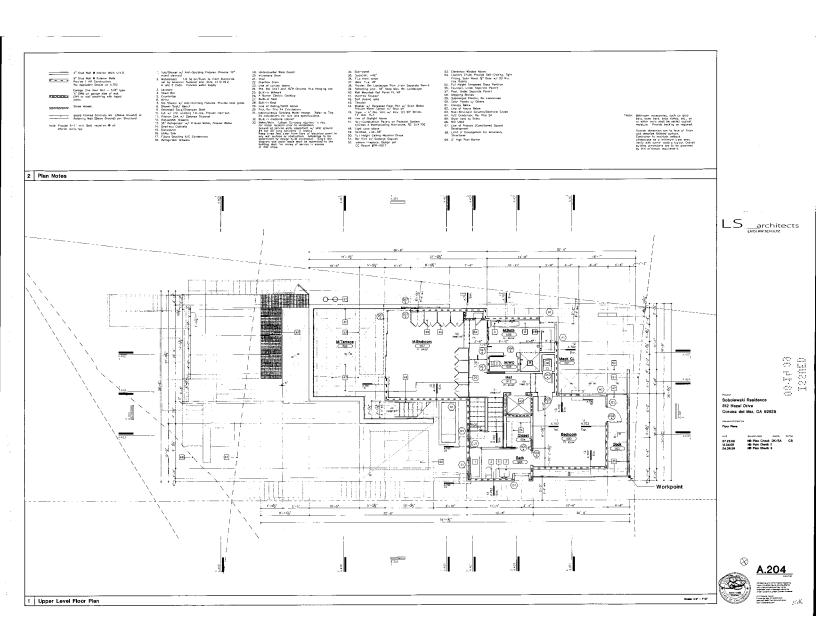


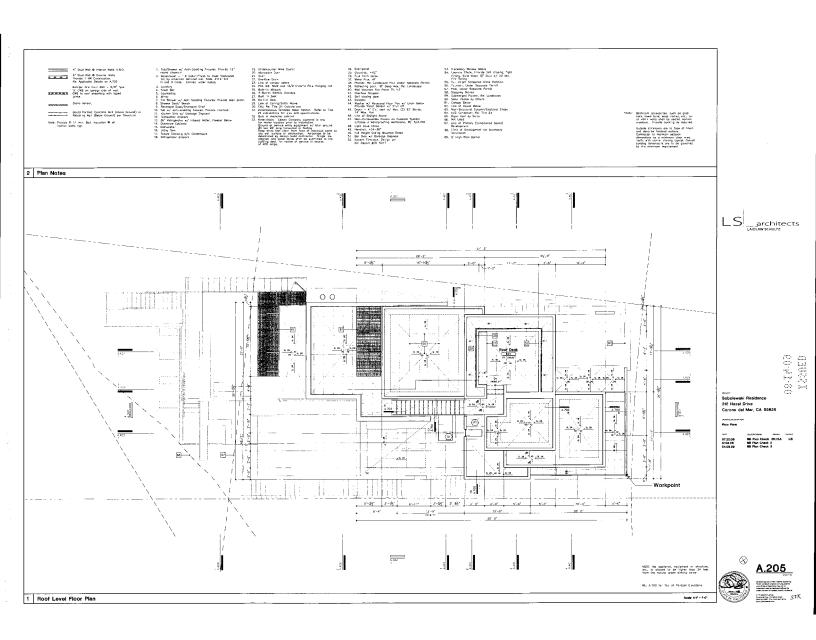












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 hacking energy from site salar energy or recovered energy. State and the set of a page between the filter and heater, to allow her hitse addition of policy health go (page 1887).

6. The circulation pump must have a living shallow that shake the pump to be set to run in the all-proce electric derivated period.

1 Swimming Pool Plan

compared sections. Participation in the production of the producti

en derminen P werfold symmetre between the following of the control of the contro 14. Special inspection is required for sharoren (quality)
15. Pool/Sea insolar vent shall be 4' away from property line.

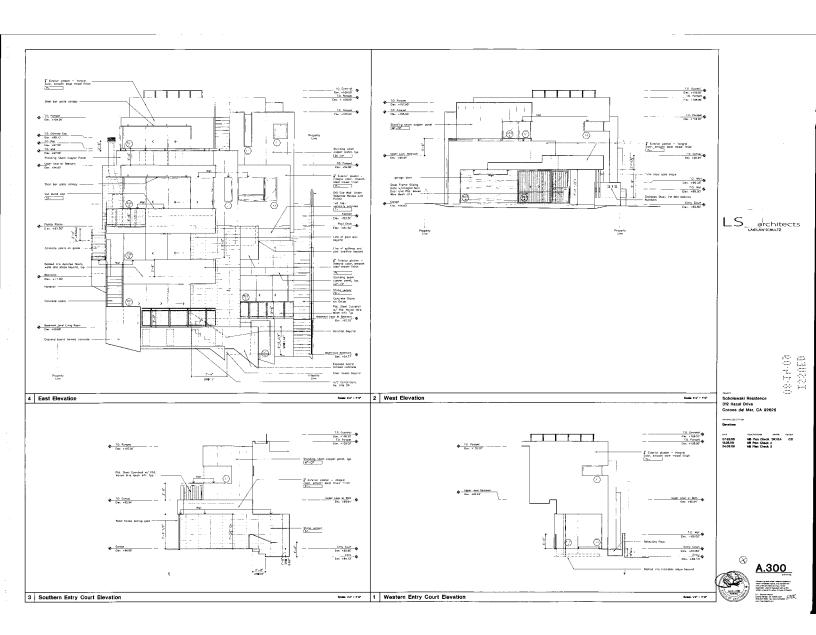
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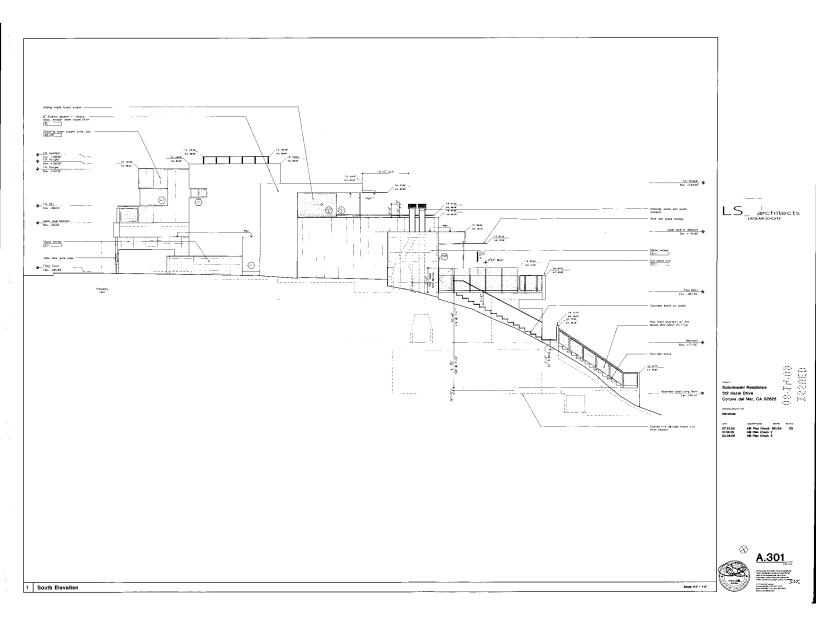
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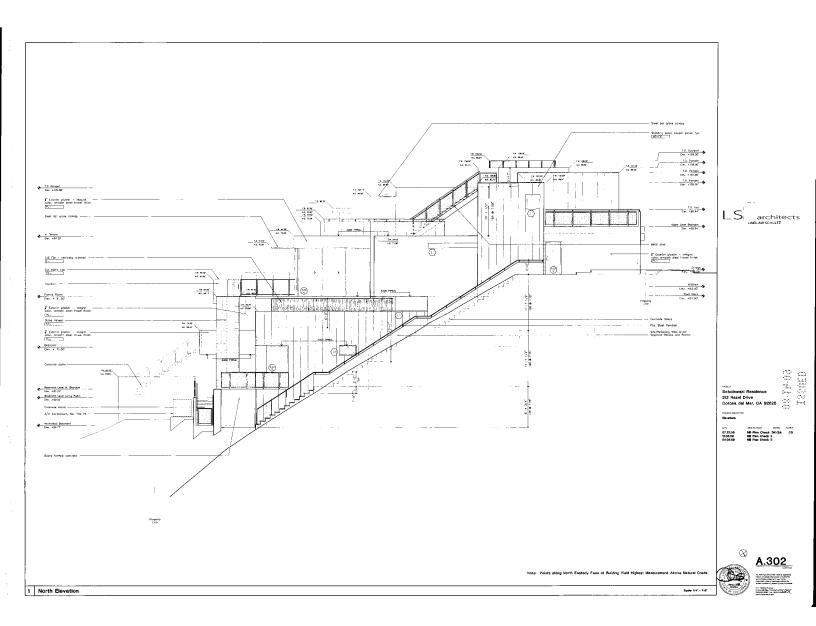
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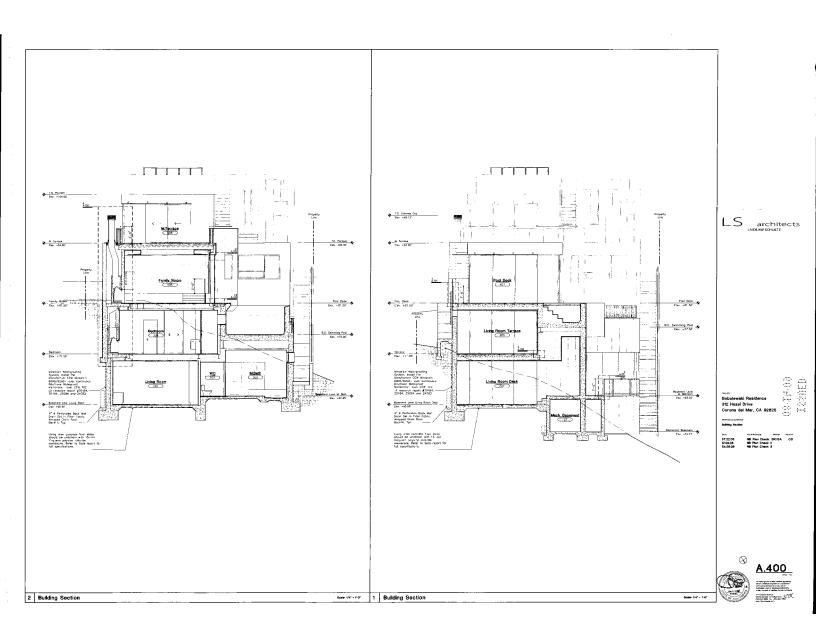
18. Sound lest by consultial engineer is required to demonstrate the need level from the pump is less than 550bs at the property lines.

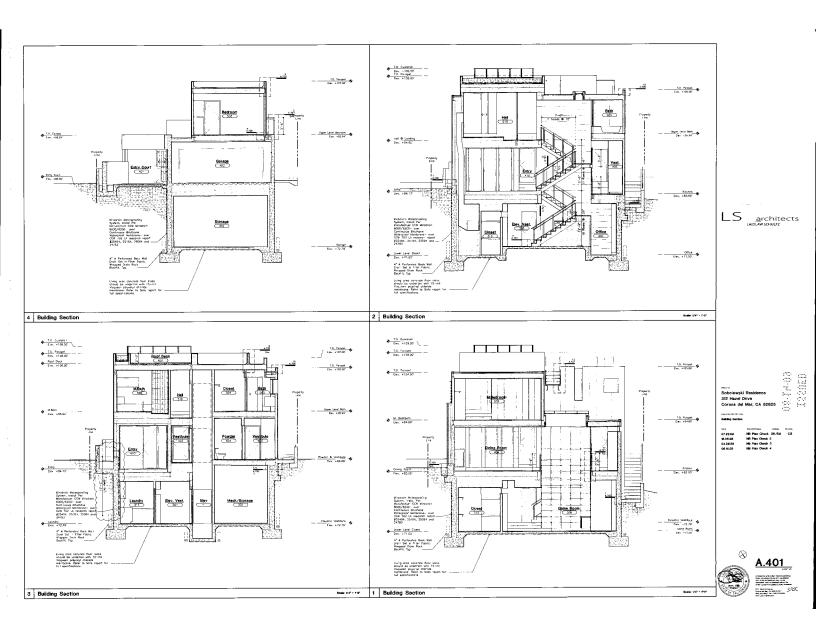
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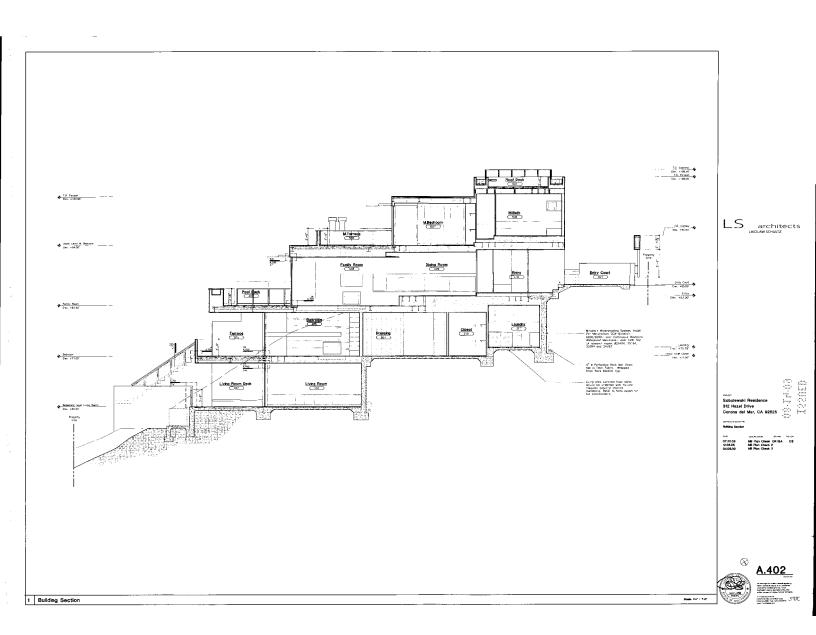


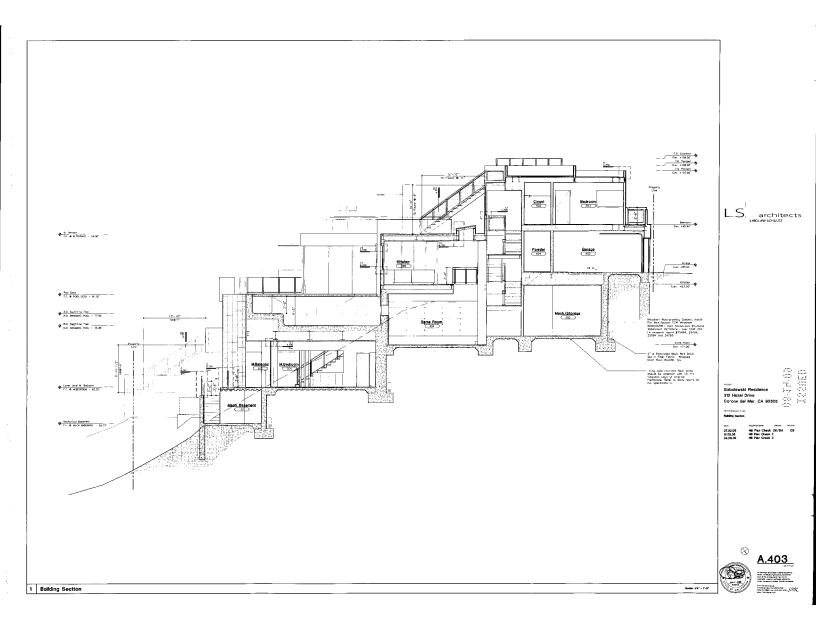


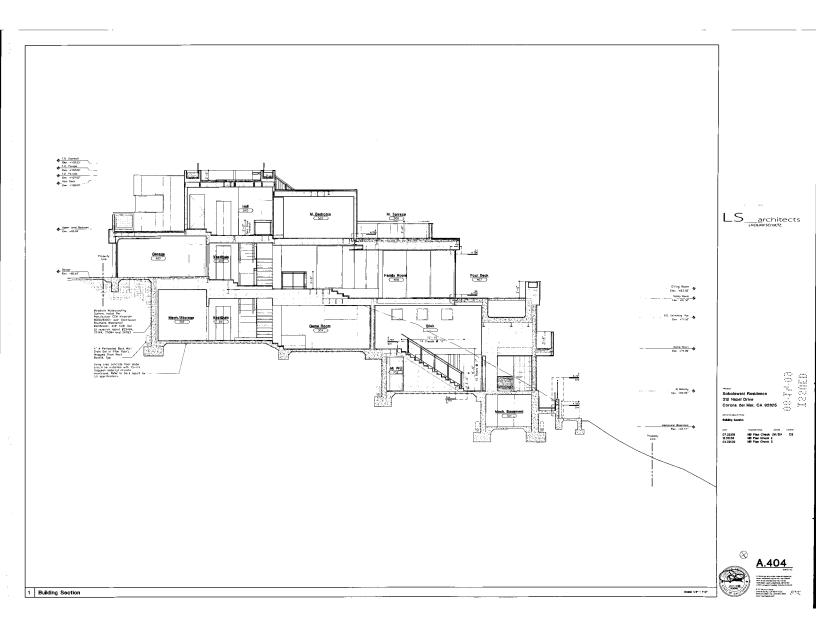












## **Attachment No. PC 6**

Original project plans for 316 Hazel Drive

ROOF COVERING: The covering applied to the roof dark for weather resistance, five classification or appreciated, (1992, 1997 CBC) RDOF DECK: The flat or sloped surface not spokeling its supporting morehers or vertical supports. (1502.1 2007 CBC)

INVENCE OF STRUCTURE: Includes returbates with a roof and no trave than one aid environed (120,2 2007 CPC, 9,04-00) NEMC()

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NOTE:

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2. DEPOSATE PLANSIBINITION HERMIT
FEQUIPMED FOR PURE POOP DECK.
980 & EQUIPMENT



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ZONING POST
CONDITION TIPE: VE OPP

APPICABLE GOTES

2007 GPC, 1007 CEC, 1007 CMC, 2007 CMC.

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ED PRIENTOI L.A. 422 PART PORE MONTONA, CA 9104 626-180-2020

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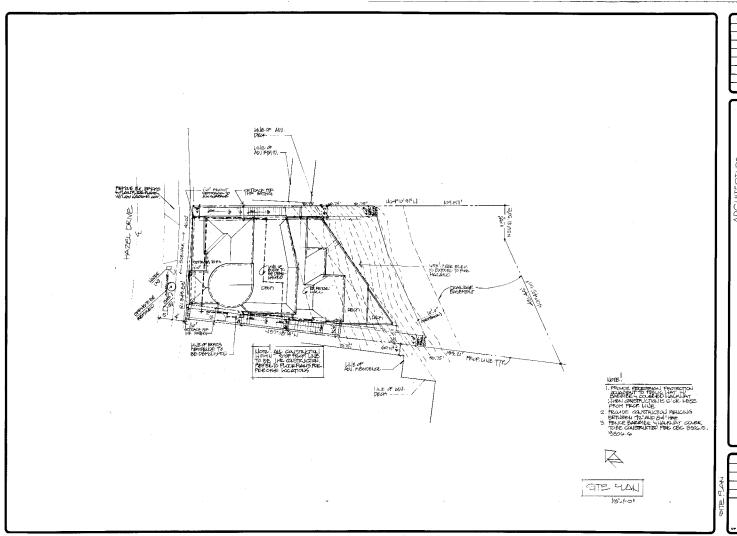
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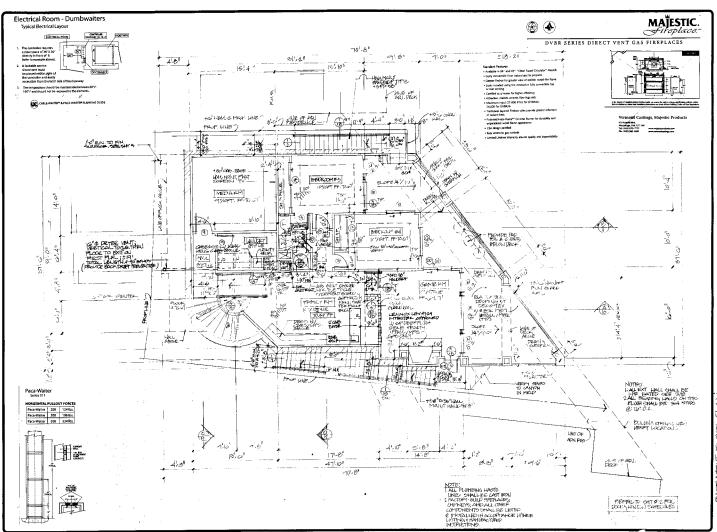
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ARCHITECTURE
JAY S CRAWFORD, ALA
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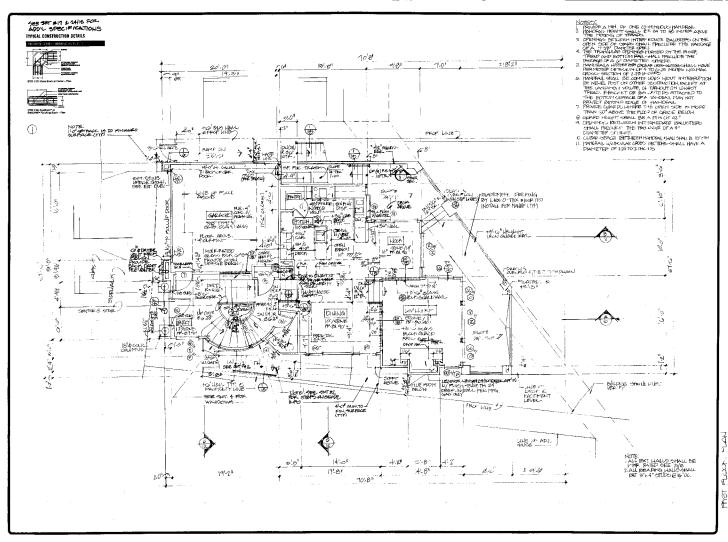
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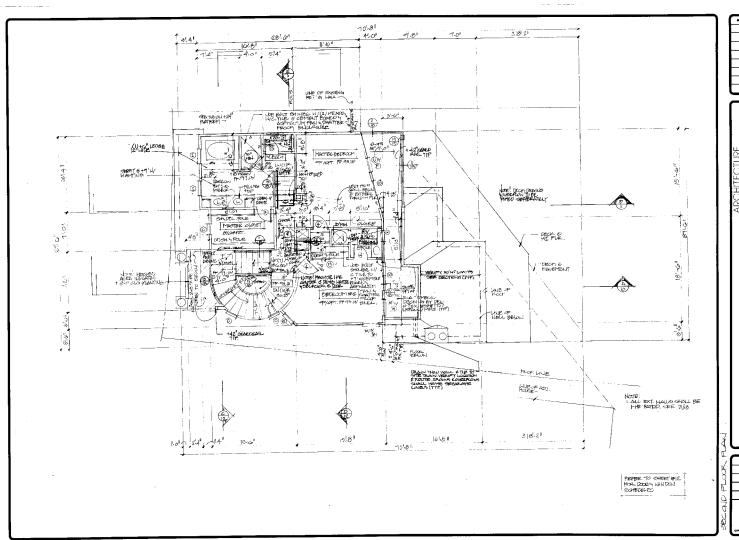


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ARCHITECTURE
JAY S. CRAWFORD, AIA
ado ww.d.
iRvine.Cn. 9268
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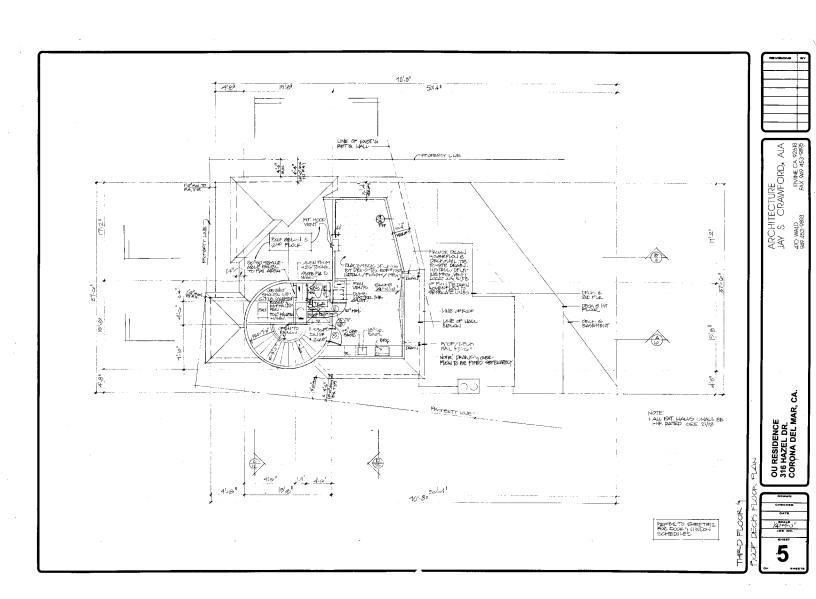


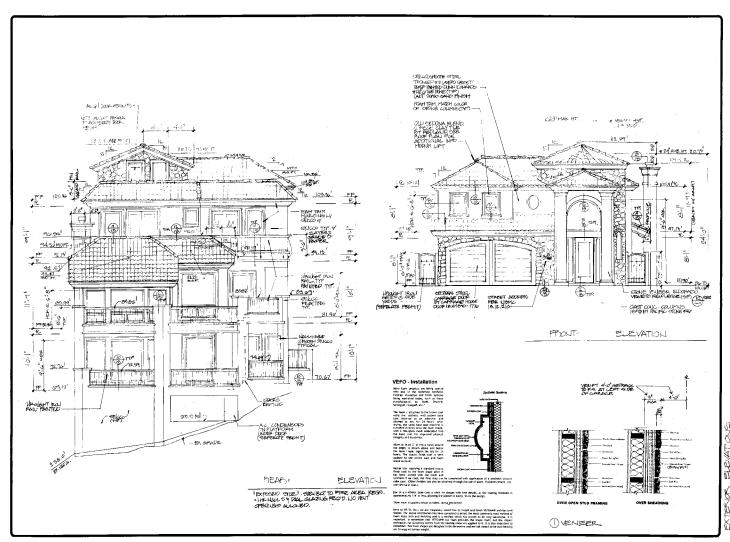
IRVINE CA. 92618 FAX 949 453-9895

ARCHITECTURE JAY S. CRAWFORD, AIA ato wald. irvine ca 22618 969 453-9893 FAX 940 453-9895

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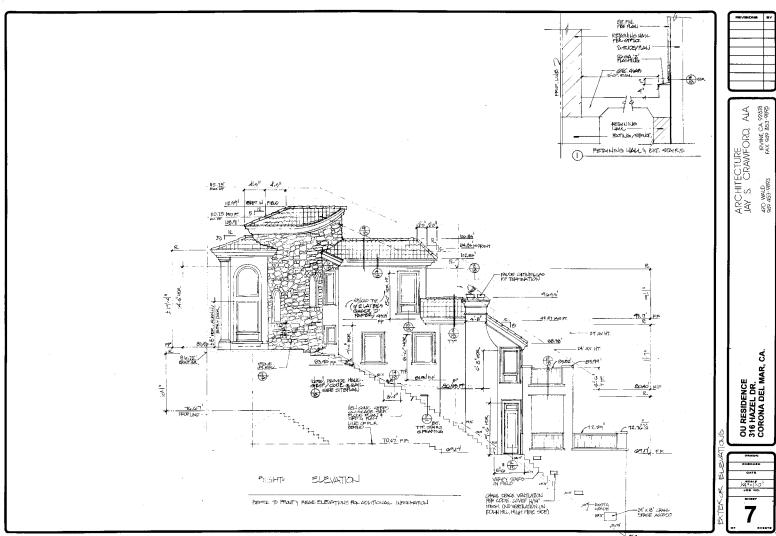


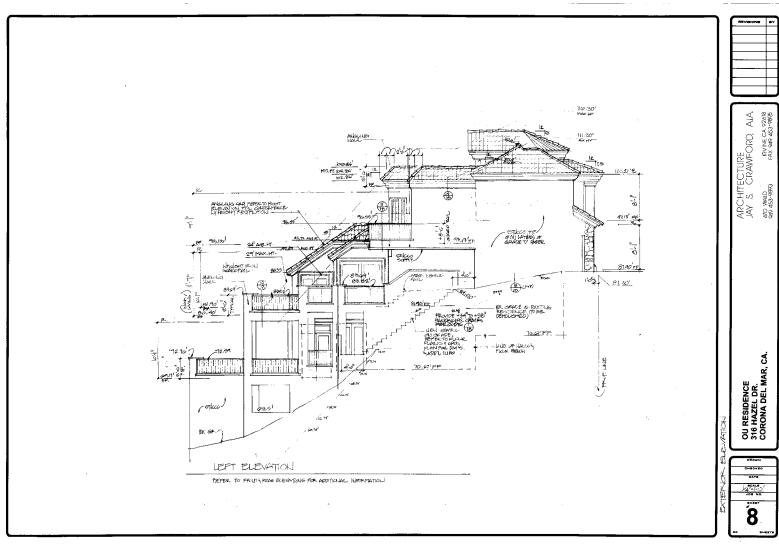
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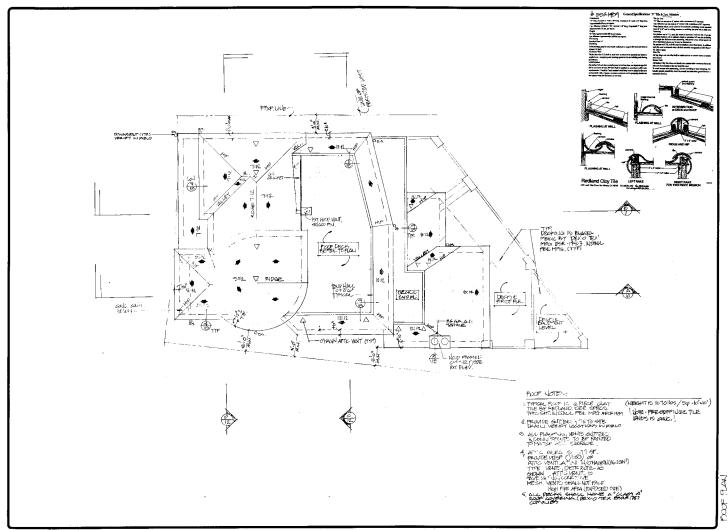






OU RESIDENCE 316 HAZEL DR. CORONA DEL MAR, CA.

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ARCHITECTURE
JAY S. CRAWFORD, AIA
400 WALD
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FAX 949 453 -9893

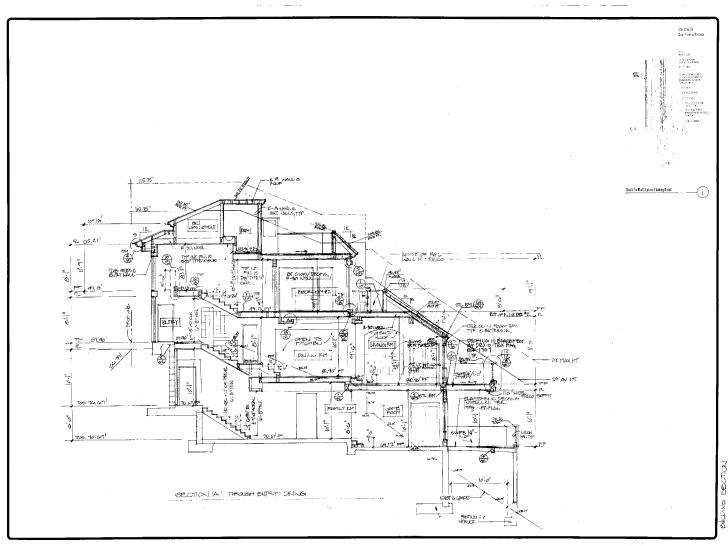
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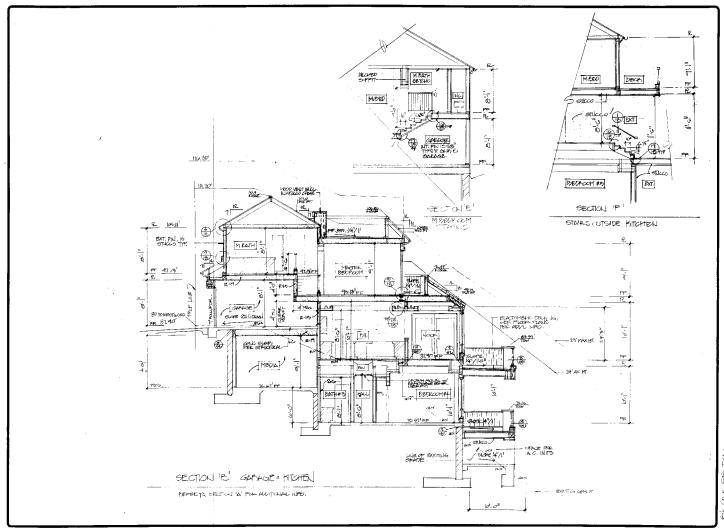
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ARCHITECTURE JAY S CRAWFORD, AJA AD WALD RIVINE CA 72618

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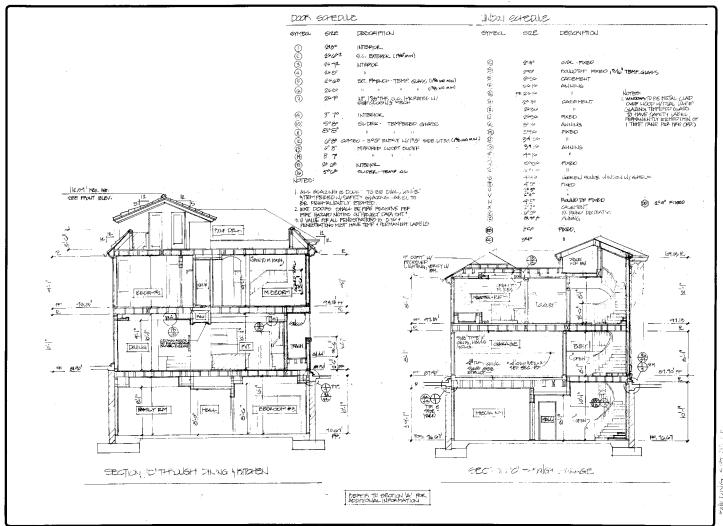
ARCHITECTURE
JAY S. CRAWFORD, ALA

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ARCHITECTURE JAY S. CRAWFORD, ÁJA. 200 WALD 200 WALD 200 WALD 200 453 9893

OU RESIDENCE 316 HAZEL DR. CORONA DEL MAR, CA.



## **Attachment No. PC 7**

Development Limit Determination for 316 Hazel Drive dated February 7, 2013



## COMMUNITY DEVELOPMENT DEPARTMENT

## PLANNING DIVISION

3300 Newport Boulevard, Building C, Newport Beach, CA 92663 (949) 644-3200 Fax: (949) 644-3229 www.newportbeachca.gov

February 7, 2013

Honzen Ou 2229 Indian Creek Drive Diamond Bar, CA 91765

Re:

Predominant Lines of Existing Development

316 Hazel Drive, Corona del Mar

Dear Mr. Ou,

This letter is in response to your request for clarification of development limits for future construction located at 316 Hazel Drive. Development of the property is subject to the General Plan, Coastal Land Use Plan, Zoning Code, and Municipal Codes (including the locally adopted Building and Fire Codes) in effect as of the time permits are issued. General Plan Policy NR23.6 (Canyon Development Standards) and Coastal Land Use Plan Policy 4.4.3-18 specify:

"Establish canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon. Do not permit development to extend beyond the predominant line of <u>existing development</u> by establishing a development stringline where a line is drawn between nearest <u>adjacent corners of existing structures</u> on either side of the subject property. Establish development stringlines for principle structures and accessory improvements." (Emphasis added)

Implementation of this policy is based upon development at the time a building permit is issued. It is a flexible policy that is dependent on the current circumstances of the property and adjacent development.

Permits for the abutting lot at 312 Hazel Drive (Plan Check No. 1511-2008) were issued on August 17, 2009, and subsequently expired on January 31, 2011.

As you know, in 2009, construction plans were submitted and approved for a new single-family residence at the subject property, 316 Hazel Drive (Plan Check No. 0641-2009). The permit was issued on May 24, 2010, based upon the existing development pattern and the building permit issued for 312 Hazel Drive. The building permit

associated with 316 Hazel Drive is no longer valid because it was cancelled as of February 9, 2012.

Given that the development of 312 Hazel Drive was not implemented and permits for that project are no longer valid, we can no longer use that development pattern to identify stringlines for permits today or in the future unless the development pattern changes in the future. I have reviewed the plans that you provided for 316 Hazel Drive and determined that the stringlines depicted are not consistent with the policies cited above.

Since conditions have changed and the expired and cancelled permits are no longer applicable, staff must identify the predominant lines of existing development (stringlines) based upon the existing structures, which are shown in the attached exhibit. As noted above, the stringlines may be reevaluated at a later date if the development pattern of adjacent properties changes in the future.

If you disagree with the determination provided in this letter, you may file an appeal to have this matter reviewed by the Planning Commission. Appeals must be filed with the Community Development Department within fourteen (14) days following the date of this letter (by **February 21, 2013**) and the current fee for processing is \$4,466.00. For additional information on filing an appeal, contact the Planning Division at (949) 644-3200. If you have any questions about this matter, please do not hesitate to contact Makana Nova, Assistant Planner at mnova@newportbeachca.gov or (949) 644-3249.

Sincerely,

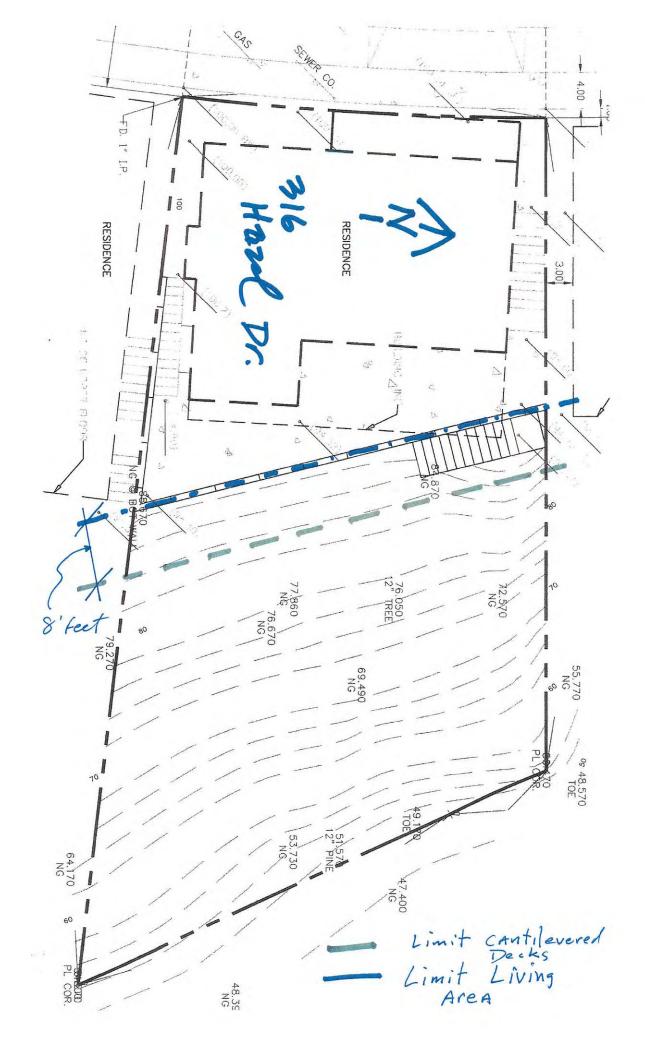
Kimberly Brandt, AICP

Community Development Director

Attachments:

Development limit exhibit

Appeal form





# **Appeal Application**

Community Development Department Planning Division 3300 Newport Boulevard, Newport Beach, CA 92663 (949)644-3204 Telephone I (949)644-3229 Facsimile www.newportbeachca.gov

For Office Use Only	
Date Appeal Filed:	
Fee Received:	
Received by:	

Application to appeal the decision of the:	☐ Planning Director
Appellant Information:	☐ Hearing Officer
Name(s):	
City/State/Zip:	
Phone:Fax:	Email:
Appealing Application Regarding:	
Name of Applicant:	Date of Decision:
Project No. (PA):	Activity No.:
Site Address:	
Along with application, please submit the	
<ul> <li>Twelve (12) 11x17 sets of the project plan</li> </ul>	ans
<ul> <li>One set of mailing labels (on Avery 596 excluding intervening right-of-ways and very 596 excluding intervening right-of-ways)</li> </ul>	60 labels) for all property owners within a 300-foot radius,

# **Attachment No. PC 8**

Development Limit Determination for 312 Hazel Drive dated February 15, 2013



## COMMUNITY DEVELOPMENT DEPARTMENT

### PLANNING DIVISION

3300 Newport Boulevard, Building C, Newport Beach, CA 92663 (949) 644-3200 Fax: (949) 644-3229

www.newportbeachca.gov

February 15, 2013

David Wood 17 Corporate Plaza Drive, Suite 200 Newport Beach, Ca 92660

Re: Predominant Lines of Existing Development

312 Hazel Drive, Corona del Mar

Dear Mr. Wood,

This letter is in response to your request for clarification of development limits for future construction located at 312 Hazel Drive. Development of the property is subject to the General Plan, Coastal Land Use Plan, Zoning Code, and Municipal Codes (including the locally adopted Building and Fire Codes) in effect as of the time permits are issued. General Plan Policy NR23.6 (Canyon Development Standards) and Coastal Land Use Plan Policy 4.4.3-18 specify:

"Establish canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon. Do not permit development to extend beyond the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property. Establish development stringlines for principle structures and accessory improvements." (Emphasis added)

Implementation of this policy is based upon development at the time a building permit is issued. It is a flexible policy that is dependent on the current circumstances of the property and adjacent development.

As you know, in 2009, construction plans were submitted and approved for a new single-family residence at the subject property, 312 Hazel Drive (Plan Check No. 1511-2008). Permits were issued on August 17, 2009, and subsequently expired on January 31, 2011.

Staff has reviewed the topographic survey for 312 Hazel Drive and determined that the stringlines used for Plan Check No. 1511-2008 are not consistent with the policies cited

above. Based upon the survey, staff has identified the predominant lines of existing development (stringlines) based upon the existing structures, which are shown in the attached exhibit. The stringlines may be reevaluated at a later date if the development pattern of adjacent properties changes in the future.

If you disagree with the determination provided in this letter, you may file an appeal to have this matter reviewed by the Planning Commission. Appeals must be filed with the Community Development Department within fourteen (14) days following the date of this letter (by **March 1, 2013**) and the current fee for processing is \$4,466.00. For additional information on filing an appeal, contact the Planning Division at (949) 644-3200. If you have any questions about this matter, please do not hesitate to contact Makana Nova, Assistant Planner at <a href="mailto:mnova@newportbeachca.gov">mnova@newportbeachca.gov</a> or (949) 644-3249.

Sincerely,

Kimberly Brandt, AICP

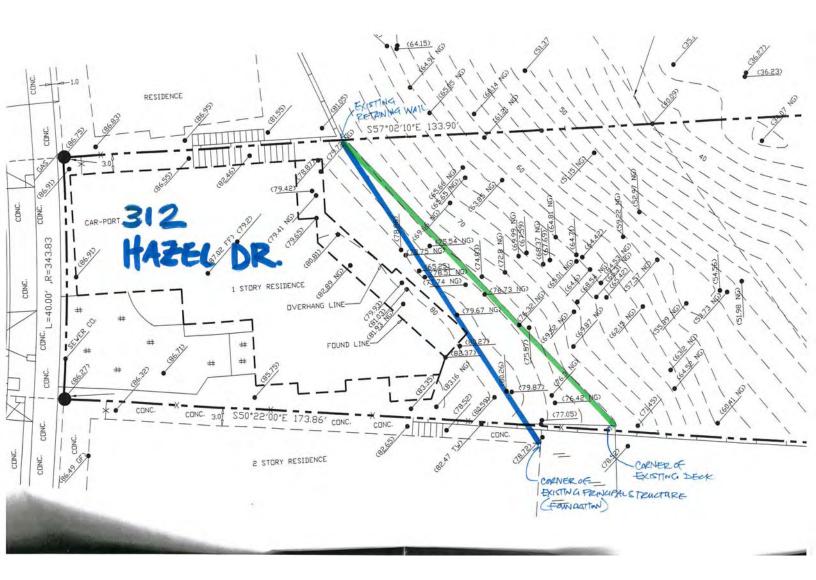
Community Development Director

Attachments:

Development limit exhibit Appeal form

Cc:

Property owner
Diane Knight
312 Hazel Drive
Corona del Mar. CA 92625





# **Appeal Application**

Community Development Department Planning Division 3300 Newport Boulevard, Newport Beach, CA 92663 (949)644-3204 Telephone I (949)644-3229 Facsimile www.newportbeachca.gov

For Office Use Only	
Date Appeal Filed:	
Fee Received:	
Received by:	

Application to appeal the decision of t	the: ☐ Zoning Administrator ☐ Planning Director ☐ Hearing Officer
Appellant Information:	
City/State/Zip:	
Phone: Fax	: Email:
Appealing Application Regarding:	
Name of Applicant:	Date of Decision:
	Activity No.:
Site Address:	
Reason(s) for Appeal (attach a separate	
Along with application, please submit	the following:
• Twelve (12) 11x17 sets of the project	plans
<ul> <li>One set of mailing labels (on Avery 5 excluding intervening right-of-ways an</li> </ul>	5960 labels) for all property owners within a 300-foot radius, and waterways, of the subject site.
Signature of Appellant:	Date:

## **Attachment No. PC 9**

Appeal Application for 316 Hazel Drive



## **Appeal Application**

Community Development Department Planning Division 3300 Newport Boulevard, Newport Beach, CA 92663 (949)644-3204 Telephone I (949)644-3229 Facsimile www.newportbeachca.gov

For Office	Use Only	1 1
Date Appe	eal Filed: 🕳	2/25/13
Fee Recei	ved: 2	25/13
Received	by: R.	MAY
-CE	IVED	

	( )
Application to appeal the decision of the:	☐ Zoning Administrator COMMUNITY  Planning Director
Appellant Information:	☐ Hearing Officer FEB 2 5 2013
//	11
Name(s): HONZEN O	O DEVELOPMENT
Address: 2229 INDIAN	CREEK ROAD OF NEWPORT SEPT OF
City/State/Zip: DINMOND BIN	C/8 91765
Phone (909) 573 - 9616 Fax:	Email: 218 ROSWELL GHAN
Appealing Application Regarding:	Con
Name of Applicant: Howsen	Date of Decision: 2-20-20/3 41-2009 Activity No.:
Project No. (PA): PLAN CITE 06	41-2009 Activity No.:
Site Address: 316 HAZEL	DR CDM NEWPORT BEACH
Description:	LINES OF EXICTING
DEVELOPEMENT OF 3	16 HAZGE DR CDM,
DISSGNEEMENT W	DR CDM NEWPORT BEACH LINES OF EXICTING 16 HAZGE DR CDM 11H THE-RASET DETERMINATION
Reason(s) for Appeal (attach a separate she	eet if necessary):
please SEE ACTIVIED	
TESTO. C SE O TESTO GIOLO	,

Along with application, please submit the following:

- Twelve (12) 11x17 sets of the project plans
- One set of mailing labels (on Avery 5960 labels) for all property owners within a 300-foot radius, excluding intervening right-of-ways and waterways, of the subject site.

Signature of Appellant:

Date: \$-20-20/5

## Appeal Application

Plan check # 0641-2009

Site address: 316 Hazel Dr. Corona del Mar

Applicant: Honzen Ou

## Reasons for appeal:

- 1) In the meeting with Ms. Makana Nova and Mr. James Campbell on February 7, 2012, I was informed that my house can longer use the original stringline because the stringline was based on the approved permit of house, 312 Hazel and the permit of the house has expired. The construction plan of my house started the end of 2008. Mr. Jay Crawford, my architect, was given by planning department a hypothetical stringline based on a proposed construction plan (not in the permit stage yet) of the house at 312 Hazel and the adjacent house of my neighbor 320 Hazel. A construction plan of 3,904 sq. ft. of my house was then filed for plan check on May 11, 2009, 3 months before the permit of the house 312 Hazel approved on August 17, 2009. So, technically, the construction plan of my house is based on a proposed stringline that is drawn and approved by the planning department and has nothing to do with the permit of 312 Hazel, whether it is current or not. This hypothetical stringline still dose exist. I believe the permit of 312 Hazel would be granted if the owner resubmits the plan since nothing has changed in construction code up to now.
- 2) For economical reason, I left my permit of my house expired on February 9, 2012 with a impression that I would be granted the same stringline and footage of 3,904 sq. ft. if I resubmit it later. Nobody from the planning department has indicated to me that I would lose both established stringline and footage. Should I was advised of above, I would have built the house then and not to suffer from a big financial loss.
- 3) Based on the letter from Ms. Kimberly Brandt dated February 7, 2013, a new stringling line was drawn and my house would be planned at 2,800 sq. ft., 1,100 sq. ft. less than the original plan. According to recent sales of houses in Corona del Mar, the average price is \$928.08 per sq. ft. The planning cost of expired permit and new plan of 2,800 sq. ft. would be \$200,000. My total loss would be more than \$1,200,000. This is a bit harsh to a responsible resident who has been paying a lot tax to the city faithfully.

Your consideration of granting me of original plan is highly appreciated!

Honzen ou February 13, 2013

# **Attachment No. PC 10**

Appeal Application for 312 Hazel Drive



# **Appeal Application**

Community Development Department Planning Division 3300 Newport Boulevard, Newport Beach, CA 92663 (949)644-3204 Telephone I (949)644-3229 Facsimile www.newportbeachca.gov

For Office Use On	ıly
Date Appeal Filed:	02-28-2013
Fee Received:	
Received by:	

Application to appeal the decision of the:   Zoning Administrator  Planning Director
Appellant Information:
Name(s): Diane Knight
Address: 312 Hazel Drive
City/State/Zip: Corona Del Mar CA 92625
Phone. 714, 3370288 Fax: 9495154608 Email: diane @line-up.com
Appealing Application Regarding:
Name of Applicant: Duny Knight Date of Decision: 2-15-13
Name of Applicant: Dancknight Date of Decision: 2-15-13  Project No. (PA): PA 2013-043 Activity No.:
Site Address: 312 Hazel Dr CDM CA
Description: Joining appeal with Mr Ou - (316 Hazel Dr)
Reason(s) for Appeal (attach a separate sheet if necessary):  Justication on separate sheet
Along with application, please submit the following:
Twelve (12) 11x17 sets of the project plans
One set of mailing labels (on Avery 5960 labels) for all property owners within a 300-foot radius, excluding intervening right-of-ways and waterways, of the subject site.
Signature of Appellant: Sam Knight Date: 2-28-13

## Knight Appeal

"Staff's determination of the predominant lines of existing development is arbitrary, unnecessarily restrictive, and contrary to the previously established predominant lines of existing development. Among other things, the development setback established by the Planning Director: (1) is inconsistent with the definition of "predominant line of development" adopted by the City; (2) is inconsistent with the predominant line of development previously applied to the property; (3) deprives the property owner of rights enjoyed by adjoining property owners; and (4) arbitrarily restricts development of the Knight property based solely on the size of a single adjacent structure."

Sheppard Mullin Richter & Hampton LLP 650 Town Center Drive, 4th Floor Costa Mesa, CA 92626-1993 714.513.5100 main 714.513.5130 main fax www.sheppardmullin.com

714.424.2821 direct drosenthal@sheppardmullin.com

File Number: 35HF-176794

March 19, 2013

#### VIA E-MAIL AND FEDEX

Planning Commission City of Newport Beach 3300 Newport Boulevard Newport Beach, CA 92663

Re: Appeal of Stringline Determination for 312 Hazel Drive, Corona del Mar (Knight Appeal)

#### Dear Planning Commissioners:

On behalf of Diane Knight, this letter appeals the Stringline Determination for 312 Hazel Drive issued by the Planning Director on February 15, 2013. The lot under appeal (the "Lot") is located on lower Buck Gully south of Pacific Coast Highway in Corona del Mar. Knight0001 Under General Plan Policy NR 23.6 and Coastal Land Use Plan Policy 4.4.3-18, the City is required to establish a "predominant line of existing development" for new structures on Buck Gully. The Planning Director previously established primary and accessory "lines of development" for this Lot on January 10, 2008; this appeal requests reinstatement of those lines in accordance with approved building plans.

#### Background

The property was purchased by the Knight-Sobelewski family ("Knight") in 2003. In June 2007, the Planning Department imposed a diagonal Stringline at or about the rear setback of the existing house, based on the corners of the immediately adjacent structures. The family appealed this decision to the Planning Commission ("2007 Appeal"). A copy of the 2007 Appeal is attached as Knight0002-34. Before the hearing, the Planning Director identified a primary "line of development" at the same rear setback as the adjacent house to the south, and an accessory "line of development" on a diagonal along the 54' contour. A copy of the Planning Director's 2008 Determination is attached as Knight0049-59.

The Knights accepted the Planning Director Determination, withdrew the 2007 Appeal and completed building plans. A building permit was issued for a new, larger home (the "Project") in 2009, but expired in 2011 after Mr. Sobelewski became terminally ill. He died in July 2012 and Ms. Knight has listed the home for sale. Plans for the home are attached as Knight0010-15 (Exhibit 1 to the 2007 Appeal). Potential buyers have requested reinstatement of the building permit as a condition of purchase.

Planning Commission March 19, 2013 Page 2

In the original 2007 Appeal, the Knights requested establishment of a "predominant line of existing development" for Buck Gully in accordance with the General Plan and CLUP. They identified two possible predominant lines, based on the rear setbacks of a representative block of surrounding structures. The first "predominant line" was a primary setback based on the rear line of the 10 adjacent homes on lots with similar developable acreage, excluding lots with severe topography not present on the Lot. The alternate predominant line was a single line based on the rear line of all statutorily-defined development, including accessory structures, of the 15 adjacent homes. Both of the proposed lines attempted to avoid creating non-conforming structures. Using a structure-by-structure stringline, for instance, makes more than half of the existing homes non-conforming. A graphic study showing the effect of a stringline is attached as Knight0048.

At the same time, the City's General Plan/LCP Implementation Committee considered establishment of a predominant line of development along Buck Gully south of PCH. A map showing proposed 100' Development Areas along Buck Gully from the April 15, 2009 Committee Meeting is attached as Knight0042-43. The draft Committee Development Areas were similar, but somewhat larger than the Knight proposals for a predominant line. The Committee did not finalize a predominant line of development in 2009, but decided to defer adoption until preparation of the Implementation Plan.

In the absence of an adopted predominant line in 2007, the Planning Director determined primary and accessory development lines for the Lot that complied with all potential development setbacks. In making this Determination, the Planning Director also recognized site-specific factors affecting the Lot, including topography and a 32' or 120% variance in setbacks between the nearest points on adjacent structures. After consulting with the General Plan/LCP Implementation Committee, the Planning Director found the Project consistent with the site planning principles of Criterion No. 7 of Ordinance No. 2007-3 and the setback direction of the Committee. Knight0051-52.

Unfortunately, Mr. Sobelewski died before the home could be built. In response to an inquiry about reinstating the expired building permit in February 2013, the Planning Director applied the same diagonal Stringline challenged in the 2007 Appeal. The Stringline does not allow construction of the home approved in 2008 in reliance on the previous Planning Director Determination. This second appeal followed ("2013 Appeal"). Knight0035-37.

There have been no changes in the relevant sections of the General Plan, CLUP or Zoning Code since 2008 when the building permit was issued for 312 Hazel Drive. The "predominant line of existing development" policy was adopted by the City in 2005 and has not been modified since that time. The City and the Coastal Commission have both acknowledged on numerous occasions that the policy is intended to be applied in a flexible manner, with due regard for site-specific factors and development rights.

Ms. Knight cannot proceed with sale of her property unless the Planning Commission establishes a predominant line of development for the Lot. The line of development applied by the Planning Director in resolving the 2007 Appeal is consistent with existing policy and

Planning Commission March 19, 2013 Page 3

procedures, and will allow the sale to go forward. This 2013 Appeal should be granted and the previously-approved development lines shown at Knight0037 reinstated.

City Policies Require Application Of A Predominant Line of Development, Not A Stringline

General Plan Policy NR 23.6 (Canyon Development Standards) and CLUP Policy 4.4.3-18 (Natural Landform Protection) state:

Establish canyon development setbacks <u>based on the predominant line of existing development</u> for Buck Gully and Morning Canyon. Do not permit development to extend <u>beyond</u> the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property. Establish development stringlines for principle structures and accessory improvements. (Emphasis added.)

Under the express language of the Canyon Development Policies, therefore, the City is required to establish and apply canyon setbacks based on the <u>predominant line of development</u>. A stringline is not a substitute for establishment of a predominant line, but a method of preventing construction beyond the predominant line.

The required setback is based on the predominant line of development for a representative group of homes along lower Hazel Drive. The Glossary defines "predominant line of development" as:

The most common or representative distance from a specified group of structures to a specified point or line (e.g. topographic line or geographic feature). For example, the predominant line of development for a block of homes on a coastal bluff (a specified group of structures) could be determined by calculating the median distance (a representative distance) these structures are from the bluff edge (a specified line).

The Glossary defines "development" as "the placement or erection of any solid material or structure; ... construction, reconstruction, demolition, or alteration of the size of any structure ..." The City typically considers development to include any structure requiring a building permit in the Coastal Zone, including decks, pools and retaining walls.

At the time of adoption, Coastal Commission Staff explained that the purpose of Policy 4.4.3 was to impose an overall "predominant line of development" along blocks of homes. After discussing application of the new predominant line of development standard to costal bluffs in suggested modifications to the 2005 CLUP Update, the Staff Report stated:

Coastal canyon development will be regulated in much the same way. Where there was previously no setback for development on canyon lots, there is now a requirement to comply with the "predominant line of development." Suggested

Planning Commission March 19, 2013 Page 4

Modification 134 provides this new standard for development along Buck Gully and Morning Canyon. The addition of a canyon setback regulation in these areas will prevent significant landform alternation and limit encroachment into natural habitats." Suggested Modifications, p. 80, NPB-MAJ-1-04, October 13, 2005 (Item Th 8d). An excerpt of the Coastal Commission Staff Report is attached as Knight0044.

The City accepted the Commission modifications, including Policy 4.4.3-18, in December 2005. In conversations with City Staff in 2007, they advised the intent of Policy was to allow flexibility in establishing setbacks in built-up areas like Hazel Drive on lower Buck Gully.

# The Approved Building Plans Are Consistent With Any Predominant Line of Development

This 2013 Appeal can be resolved by establishing an individual predominant line of development for the Knight Lot without affecting the entire block of homes. Staff concurs that this approach is allowed under the CLUP and consistent with City procedures. Ms. Knight proposes a predominant line that meets the following tests: it grants similar development rights to similar properties; it applies a standard that avoids creating non-conformities on existing lots to the extent possible; and it does not interfere with adoption of a predominant line for the entire block of homes in the future. The building plans previously approved by the Planning Director meet all of these tests.

The purpose of a predominant line of development is to control encroachment into natural areas, while respecting the rights of adjacent owners to use their property on an equitable basis. In this case, two aerial photographs are worth several thousand words. Two photographs of lower Hazel Drive, dated 3/5/2013, are attached as Knight0045-46; 0062. As clearly shown, "development" extends almost to the bottom of Buck Gully on a number of lots. The Knight Lot is tucked behind a much larger structure, blocking any views to the south. All but 4 lots extend farther into the Gully than the Knight Lot.

The General Plan/LCP Implementation Committee considered a 100' setback from the front property line as the predominant line of development, including both primary and accessory development in the same zone. Knight0042-43. This predominant line did not make any of the existing structures non-conforming, and would comfortably allow construction of the Knight Project, which extends 54'11' from the property line for the primary structure and less than 30' for decking and other accessory structures. As approved, the plans are consistent with the 100' setback line considered by the Committee.

In the 2007 Appeal, the City also considered information about existing setbacks submitted by the Knight family. All of the existing structures, both primary and accessory, were measured from their front property lines, and the size of lots analyzed. As shown on Knight0023-30 (Exhibits 4, 5, 6 and 7 to the 2007 Appeal), simple setback

Planning Commission March 19, 2013 Page 5

averaging made a high percentage of lots non-conforming. Even dropping out the lots constrained by topography made seven of the lots non-conforming. Factoring in the size of lots, together with topography, met the above standards, and minimized non-conformity. See Knight0031-32 (Exhibit 8 to the 2007 Appeal). The preferred predominant line incorporated accessory structures within the setback lines in accordance with the City's definition of "development" and the general approach of the Committee. See Knight0033-34 (Exhibit 9 to the 2007 Appeal). The Knight Project is consistent with either of these predominant lines.

The "line of development" determined by the Planning Director on the 2007 Appeal was even more restrictive than the above lines, thus ensuring consistency with any future adoption. The primary line was set at 54'11' or at the same setback as the neighboring house to the south. The accessory line was set at the limit of the first terraced area on the property to the south, which is at the 54-foot contour line. This Determination allowed the residence to extend into Buck Gully by the same distance as the residence at 308 Hazel Drive, but required accessory structures to pull back to the north. It also reflected the larger size of the Lot, which has more developable area than most other Hazel Drive lots.

# The Previously Approved Line Of Development for the Knight Lot Is Consistent With Precedent

In the absence of adopted predominant lines of development for Buck Gully and Morning Canyon, the City has used a modified stringline approach to ensure consistency with potential future predominant lines of development. For instance, of 16 stringline projects made available for review, four were approved before Policy 4.3.3-18 was adopted and another three were submitted at the same time as the Knight Project. Of the total 16 projects, stringlines were exceeded or modified for site-specific reasons in at least 12 cases. On some lots, both the primary and accessory structures appear to exceed the designated stringline. In other cases, the nearest structural corner is not used or the connection is unclear. City Staff has also worked with the Evening Canyon homeowners association, which applies its own slightly different stringlines to homes on the east side of Buck Gully. Aerial photographs of the 16 lots are available upon request.

Even in situations where a predominant line of development is not adopted, the Coastal Commission has applied stringlines flexibly to reflect existing development patterns, site characteristics and equity. At 3 Canal Circle in Newport Beach, for instance, the Coastal Commission explained that "each development is reviewed on a case-by-case basis and while in this area stringline is typically used to prohibit encroachment toward the [Semeniuk] slough, in this instance the siting of the existing development already established the development pattern and the proposed project would not exacerbate an existing non-conformity. Thus, the development as proposed is consistent with the character of the surrounding area." Staff Report, p. 1, #5-10-254, October 28, 2010 (Item W4a), attached as Knight0041. At 168 West Avenida San Antonio in San Clemente, the Commission rejected a stringline that "would further restrict the size of the development footprint compared with adjacent pattern of development

Planning Commission March 19, 2013 Page 6

with no significant benefit of increased protection of coastal resources." Staff Report, pp. 10-11, #5-12-314, December 19, 2012 (Item W19g), attached as Knight0038-40.

#### Conclusion

For all of the above reasons, Ms. Knight requests reinstatement of the development line for 312 Hazel Drive previously determined by the Planning Director in 2008, or adoption of the predominant line of development shown at Knight0033-34 (Exhibit 9 of the 2007 Appeal).

Very truly yours,

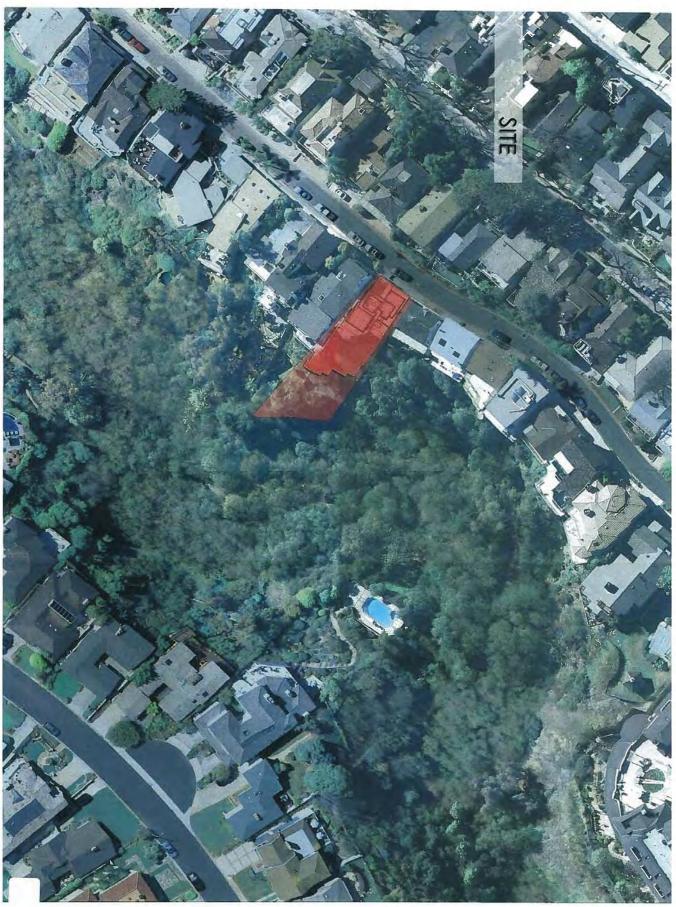
Deborah M. Rosenthal, AICP

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:408169837.2 Attachments

cc: Ms. Diane Knight

Ms. Kimberly Brandt, AICP Mr. James Campbell Ms. Makana Nova



## BINGHAM

Deborah M. Rosenthal, AICP Direct Phone: 714.830.0607 Direct Fax: 714.830.0727 deborah.rosenthal@bingham.com

October 5, 2007

#### Via FedEx

Mr. David Lepo Planning Director City of Newport Beach 3300 Newport Boulevard Newport Beach, CA 92663

Re: "Predominant Line of Development" for 312 Hazel Drive, Corona del Mar (Knight Appeal)

Dear David:

On behalf of Diane Knight and Erik Sobolewski (the "Applicants"), this letter expands on the information submitted to Patrick Alford during our meeting at your offices on September 18, 2007. We appreciate the opportunity to supplement and explain the maps and calculations we provided at that time in connection with the issue of "predominant line of development." As we discussed with Patrick, we hope to work with Staff to resolve the rear setback for 312 Hazel Drive (the "Knight Property") administratively.

In our most recent discussion with Patrick, he asked the Applicants to designate their preferred approach to determining the "predominant line of development" for their property. As discussed in detail below, the Applicants support the predominant line shown on the attached Exhibit 9 (see item 5 on page 7). It is a line drawn on the existing line of land disturbance in the rear yards of the majority of homes along Buck Gully. It has the advantage that it does not make any of the existing homes or accessory structures non-conforming, while complying with the City's visual resource and landform alteration goals.

#### **Factual Background**

The Knight Property is located inland on Buck Gully, approximately half-way between Ocean Boulevard and East Cost Highway. The existing house is a small, one-story single-family structure built in the 1940s. The rear of the property is not visible from the coast or any public roads to the south, and is barely visible from East Coast Highway located some distance to the north.

Original Purchase: The Applicants purchased the Property three years ago with the intention of expanding the existing house consistent with the size of their lot, one of the largest on Hazel Drive. They worked closed with Staff to prepare a site plan that would satisfy all of the setback and other requirements under the existing zoning. They explored the necessity for a special environmental setback through extensive discussions with Staff, and reached agreement that normal rear setbacks would apply at this location.

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

Bingham McCutchen LLP Plaza Tower, 18th Floor 600 Anton Boulevard Costa Mesa, CA 92626-1924

> T 714.830.0600 F 714.830.0700 bingham.com

The Property is already subject to a 40' setback from the rear property line for environmental protection under an existing easement and the current zoning. All of the riparian habitat on the site is protected by the zoning setback. The developable portion of the Property, under the existing zoning, does not contain any sensitive habitats, flood plains or other vegetation. The development plan includes erosion and stormwater controls

Proposed Design: As revised in coordination with Planning Staff, the proposed home design minimizes grading impacts and respects existing topography by stepping down the property on four levels. Building floor plans are attached as Exhibit 1. The rear elevation of the residence is both compatible and consistent with the adjacent structures, and does not significantly affect either public or private views. Views of the proposed structure from East Coast Highway are shown on the visual simulation attached as Exhibit 2.

Surrounding Development: The Knight Property is the 15th house on the east side of Hazel Drive from its southern terminus. All 14 lots to the south have been improved with larger homes extending approximately equal distances into their rear yards. In addition to the main structures, many of these lots have extensive development in the rear yards, with retaining walls, free-standing structures and other significant improvements. Photographs of structures in the rear yards of the two houses immediately south of the Knight Property are attached as Exhibit 3.

Immediately north of the Knight Property are 5 or 6 smaller lots containing older cottages, which have not been remodeled. For the most part, these lots are considerably smaller than the Knight Property and have less buildable area. Although it is not visible from an aerial, these lots are also largely constrained by a steep drop-off into the canyon which physically precludes expansion into their rear yards. In effect, therefore, except for the Knight Property, all of the homes with usable rear yards on Hazel Drive have approximately equal rear development lines. The only exceptions are the homes on small lots located closer to a defined canyon edge immediately north of the Knight Property.

At approximately 5,000 square feet, Knight Property appears to be one of the largest residential lots on the west side of Buck Gully. In addition to its larger size, the Knight Property has a moderately sloping usable rear yard like the parcels to the south. Therefore, unlike the steeply sloping lots to the north, the Knight Property can support rear expansion without extensive grading. As noted above, the home is designed to fit the topography of the site consistent with the lots to the south, with minimal grading.

#### **Planning Context**

The Natural Resources Elements of the General Plan contains four goals relating to "Visual Resources." Goal NR 23 requires that: "Development respec[t] natural landforms such as coastal bluffs." Policy NR 23.6 relates to Canyon Development Standards:

"Establish canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon. Do not permit development to extend beyond the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property. Establish development stringlines for principle structures and accessory improvements."

Patrick Alford was involved in drafting this language. During our meeting, he explained that the "predominant line of development" was intended as the primary development control. The purpose of the stringline was to give the City flexibility to address site-specific situations where application of the predominant line would be impractical or unfair and to ensure that structures did not extend beyond the "predominant line of development."

"Predominant line of development" is defined at page 14-61 of the Newport Beach General Plan as:

"The most common or representative distance from a group of structures to a specific point or line (e.g. topographic line or geographic feature). For example, the predominant line of development for a block of homes on a coastal bluff (a specific group of structures) could be determined by calculating the median distance (a representative distance) these structures are from the bluff edge (a specified line).

Patrick also explained that there is no single formula for determining a "predominant line of development" because of differences in physical features and factual situations. The definition also gives the City flexibility in determining the number of structures in a "group" or "block" that are relevant to establishing a predominant line. According to the General Plan, the purpose of establishing a predominant line is to protect visual resources, which can also guide the City's decision-making.

"Development" is defined at page 14-45 of the General Plan as:

"The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; any mining, excavation, landfill or land disturbance, and any use or extension of the use of land."

Under the General Plan, therefore, development is defined to include any area of land disturbance, such as terraces, decks, patios and accessory structures.

As stated in your letter of June 26, 2007, Ordinance No. 2007-3 establishes a set of criteria used to determine the consistency of certain residential projects with the General Plan, including the Natural Resources Element. Criterion No. 7 states:

"Site planning should follow the basic principle of designing development to fit the features of the site rather than altering the site to fit the design of the development. Whenever possible, altering natural features such as cliffs, canyons, bluffs, significant rock outcroppings, natural vegetation should be avoided or the extent of alteration minimized. Adequate buffers should be provided to protect significant or rare biological resources."

In addition to its stated purpose of protecting visual resources, the Planning Department has concluded that Policy NR 23.6 can be used to interpret and apply Criterion No. 7 to development along Buck Gully.

## **Determination of Predominant Line of Development**

After our meetings with you and Patrick Alford, the Applicants worked with their architect to collect information about surrounding development. They limited their analysis to seven existing houses to the south and eight houses to the north, for a total of 15. Although there are another seven houses further south on the west side of Buck Gully, they do not significantly differ in scale from the seven nearer homes.

The information collected by the Applicants showed the distance from the front lot line to the main rear elevation of the structure for each of the 15 homes in the analysis, based on building permit information and aerial photographs. Accessory development was also assessed, using aerials obtained from the City at a 1.5' resolution. The resulting development lines were calculated mathematically and drawn on the aerials using a CAD computer program.

With their architect, the Applicants evaluated the following potential approaches:

- 1. Mean Development Line/Current Development: Exhibit 4 shows the mean line of development obtained by totaling the rear elevation distances for all 15 primary structures and dividing by 15. The distances ranged from 23'1" for House 8 to 73'10" for House 15, resulting in a mean development line of 45'6" from the front lot line. Although simple to calculate, this approach was removed from further consideration for the following reasons:
  - (a) it would make 8 of the 15 homes (53%) non-conforming, depriving the property owners of the right to re-build in the event of catastrophic loss. If the additional 7 homes to the south had been included, an

- even higher percentage would have been non-conforming;
- (b) it would make the existing accessory improvements on most of the adjacent lots non-conforming, preventing any replacement or expansion;
- (c) it does not differentiate between moderately and steeply sloping yards, which require different amounts of grading and result in different visual impacts;
- (d) it imposes additional rear setbacks on private property without making any difference in the level of visual resource protection, as shown on Exhibit 2; and
- (e) it establishes a "predominant" line that is exceeded by more than half of the affected homes, which is not reasonable.
- 2. Mean Development Line/North and South: Exhibit 5 shows the mean lines of development separately for the properties north and south of the Knight Property. The mean setback line for the 7 properties south of the Knight Property is 51'3." The mean setback line for the 8 properties north of the Knight Property is 40'7." In effect, this approach resulted in grouping the homes along Buck Gully into two "blocks," based on lot size and topography. As explained above, the Knight Property is similar to the southern lots, both in size and topography. However, this approach was removed from further consideration for the following reasons:
  - (a) it would make 4 of the 7 homes (57%) to the south and 3 of the 8 (37%) homes to the north non-conforming, depriving the owners of all newer homes on the street of the right to re-build in the event of catastrophic loss;
  - (b) it would make the existing accessory improvements on most of the southerly lots non-conforming, preventing any replacement or expansion;
  - (c) it imposes additional rear setbacks on private property without making any difference in the level of visual resource protection, as shown on Exhibit 2; and
  - (d) it establishes a "predominant" line that is exceeded by more than half of the homes in the group, which is not reasonable.

- 3. Mean Development Line/Developed Sites Only: Exhibit 6 shows the mean line of development for all 10 of the fully developed sites, but excluding the smaller cottages to the north located closer to a steep canyon edge. The resulting mean setback line for the 10 developed sites is 52'11." This approach recognizes the topographic constraints applicable to the 5 smaller lots, but it was nonetheless removed from further consideration for the following reasons:
  - (a) it would make at least 3 of the 10 homes (30%) non-conforming, depriving the owners of the right to re-build in the event of catastrophic loss;
  - (b) it would make many of the existing accessory improvements on the southern lots non-conforming, preventing any replacement or expansion;
  - (c) it imposes additional rear setbacks on private property without making any difference in the level of visual resource protection, as shown on Exhibit 2; and
  - (d) it is not based on the actual amount of "development" on the lots because it is limited to the main structure only; and
  - (e) it treats structures on the east side of Buck Gully differently from those on the west side, which have a mean primary structure line of 62'8" from their front lot lines. See Exhibit 7.
- 4. Predominant Line/Primary Development: Exhibit 8 shows the predominant line that results from averaging the depths of homes on lots at least equal in size to the Knight Property. For the most part, it skims the existing rear elevations, with the major advantage that it would make only a small part of one home non-conforming. It is consistent with the majority of primary structures along Buck Gully, and recognizes existing lot sizes and topography. On the smaller lots, the canyon edge serves as a physical constraint that would effectively prevent development from extending to the predominant line; environmental setback requirements would add an additional level of protection at these locations. The Applicants can accept this approach because it is consistent with existing rear elevations and would not penalize owners of the larger homes in the event of catastrophic loss.

However, the Primary Development approach does not truly reflect the actual amount of "development" along Buck Gully. As noted above, the General Plan defines development to include any area of land disturbance. In this case, most of the homes along Buck Gully include extensive improvements extending a substantial distance into their rear yards. For instance, the parcel immediately south of the Knight Property is terraced, with permanent retaining walls, paving and other structures. The next property has a free-standing accessory structure located some additional distance from the main

structure, with a terraced slope. *See* Exhibit 3. If these improvements are considered "development," in accordance with the General Plan glossary, they would be non-conforming for the purposes of future replacement.

In terms of visual impact, there is no significant difference between the lower levels of the proposed Knight home and the retaining walls and structures on adjacent property. All of them are screened from view by topography and vegetation. In terms of landform alteration, there is no significant difference between the grading required for the proposed Knight home and the paved terraces and retaining walls on adjacent property. Both of them require grading, but follow the natural landforms. For this reason, the Applicants believe that the Primary Development approach is more restrictive than necessary under the General Plan.

5. Primary Line/Accessory Development: Exhibit 9 shows the predominant line that results from following the actual line of ground disturbance in the rear yards of the 15 homes along Buck Gully. The Applicants believe this line is appropriate because it is consistent with both the visual resource goal of the General Plan and the landform protection goal of Ordinance No. 2007-3. The Applicants therefore support this approach because it allows the same amount of land disturbance, i.e. "development," on their property as on other properties along the east side of Buck Gully.

We appreciate the opportunity to explain the various approaches analyzed by the Applicants and the reasons they support a "predominant line of development" that is consistent with the goals and definitions of the General Plan. We are available to discuss this information with you at your earliest convenience, and to answer any questions you may have about how the exhibits were created.

Thank you for the close attention you and Patrick have given this matter.

Very truly yours

Deborah M. Rosenthal, AICP

Enclosures

cc: Mr. Patrick Alford

Mr. Erik Sobolewski Ms. Diane Knight



# Fed Ex.

package id 0112757 ship date

return label

Fri, Oct 05

to

David Lepo
City of Newport Beach
3300 Newport Blvd
Newport Beach , CA 926633816 US
949-644-3228
dlepo@city.newport-beach.ca.us
residential address
No

notification type
Delivery
notification recipients
lynn.pauley@bingham.com

from
Deborah M. Rosenthal (34332)
Bingham McCutchen LLP
600 Anton Boulevard
18th Floor
Costa Mesa, CA 92626 US

714-830-0607

billing

Sobolewski Eric and Knight

Dia...Diane.Development of

312 Hazel Drive (3006737.0000326895)

operator Lynn Pauley 714.830.0665 lynn.pauley@bingham.com create time 10/05/07, 4:19PM *vendor* FedEx

tracking number 791405477307

service FedEx Priority packaging FedEx Pak dimensions 2.0 LBS

signature
Adult signature - at address

options

Insurance on declared value of 1.00

courtesy quote 14.49

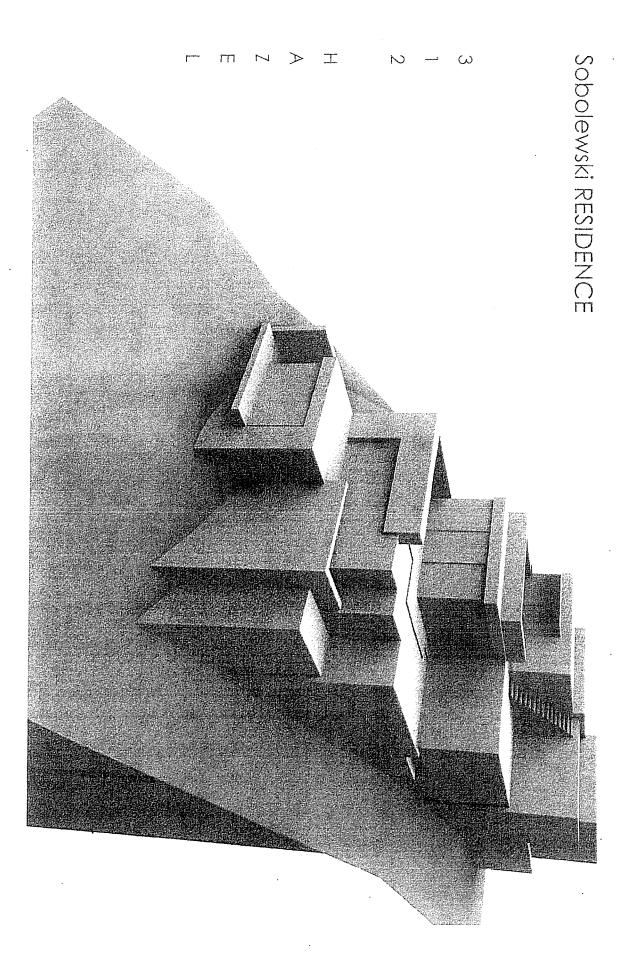
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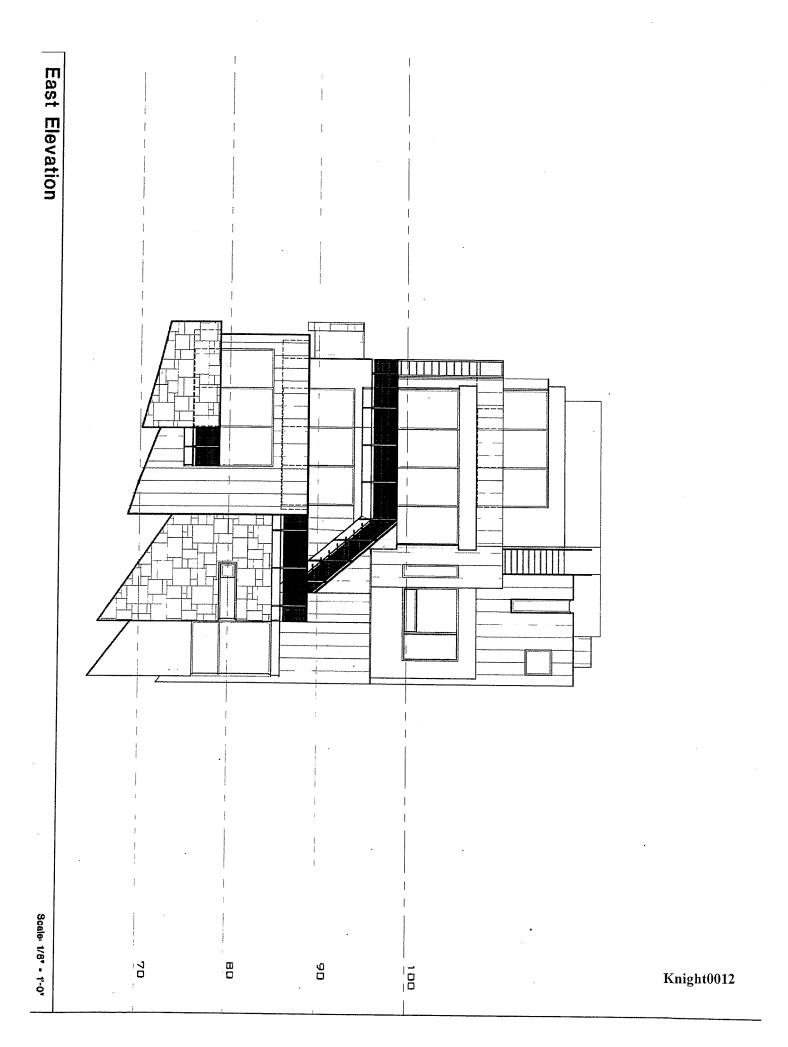
#### Legal Terms and Conditions

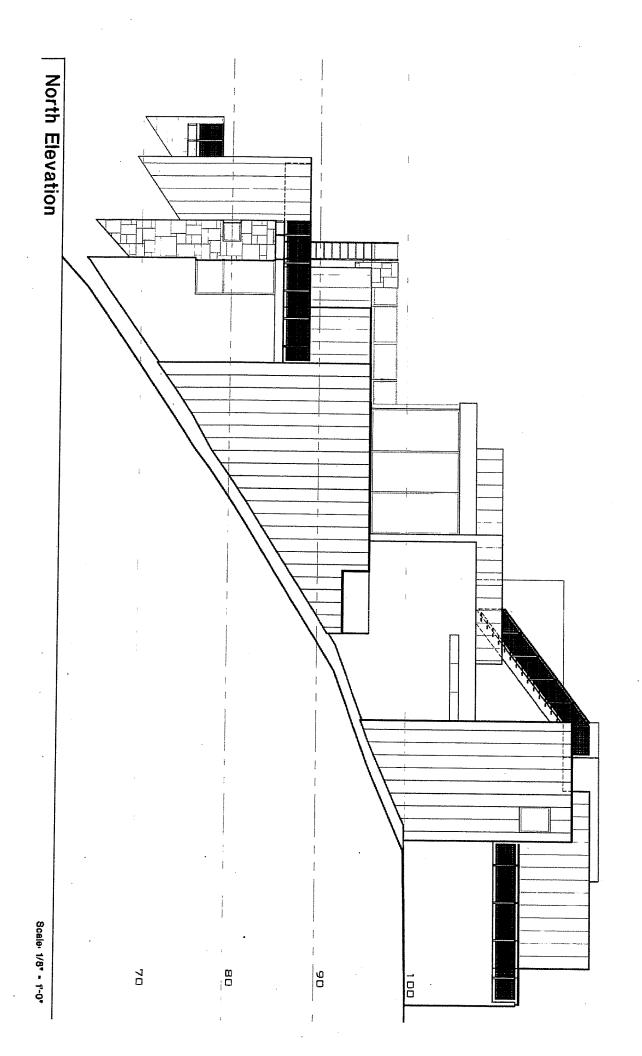
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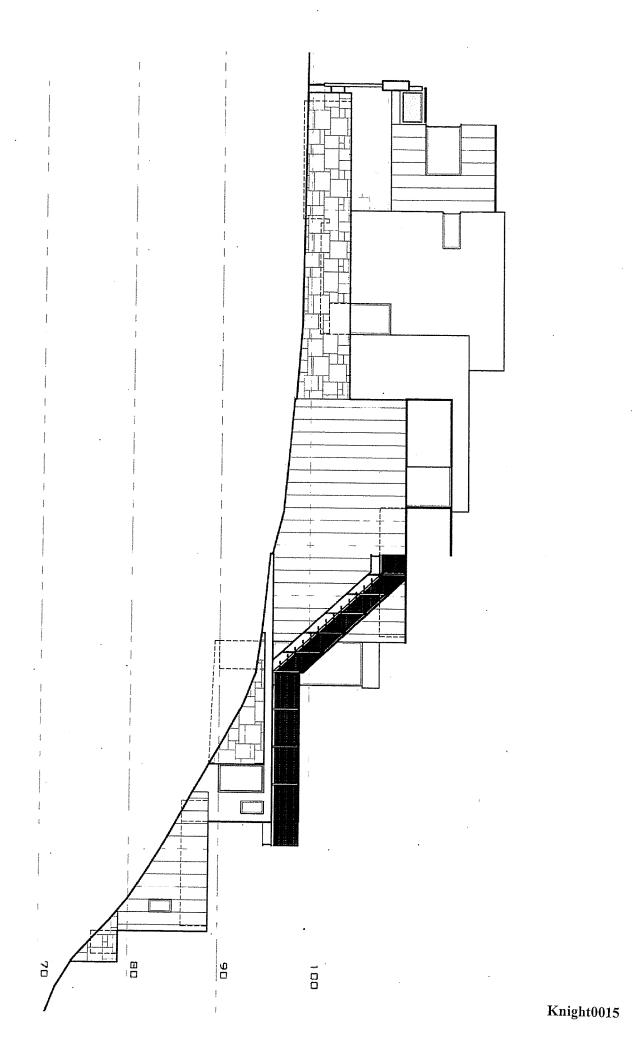
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# EXHIBIT 1

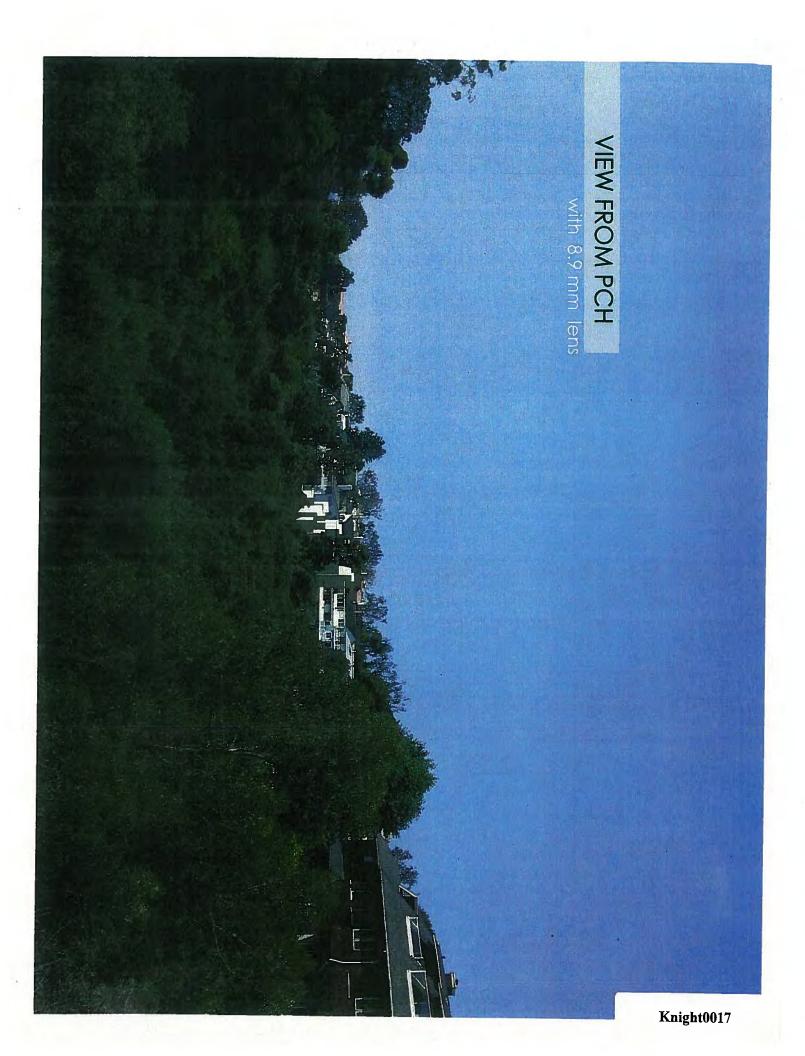


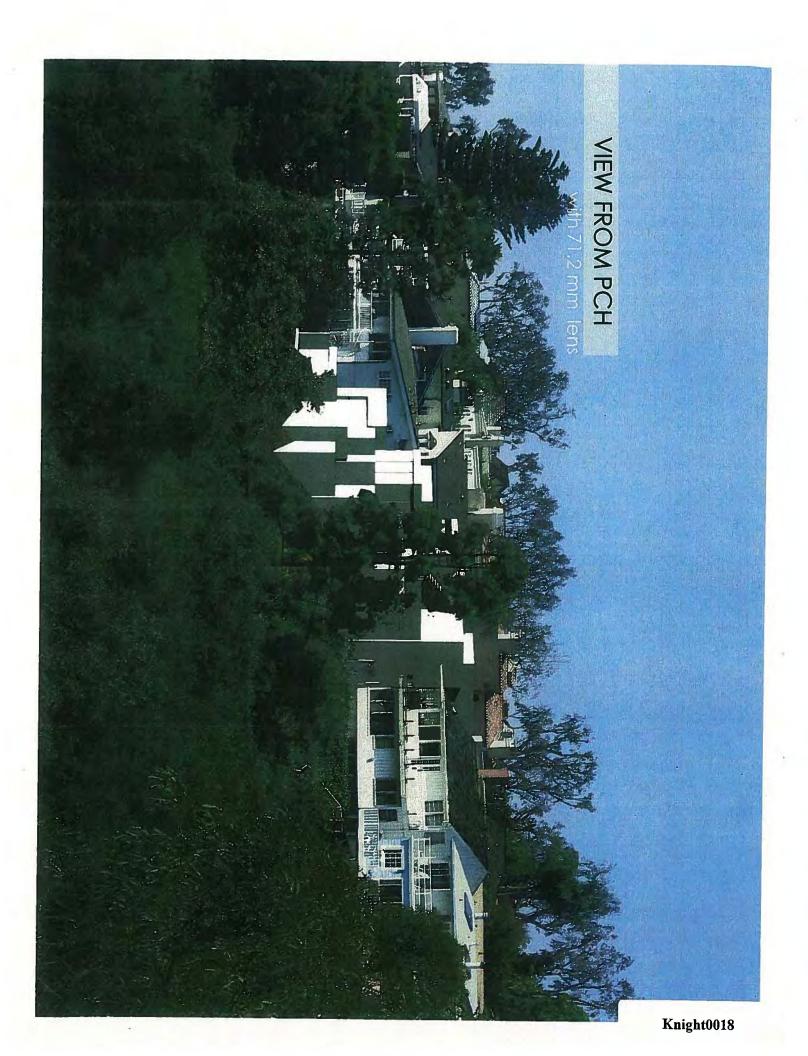






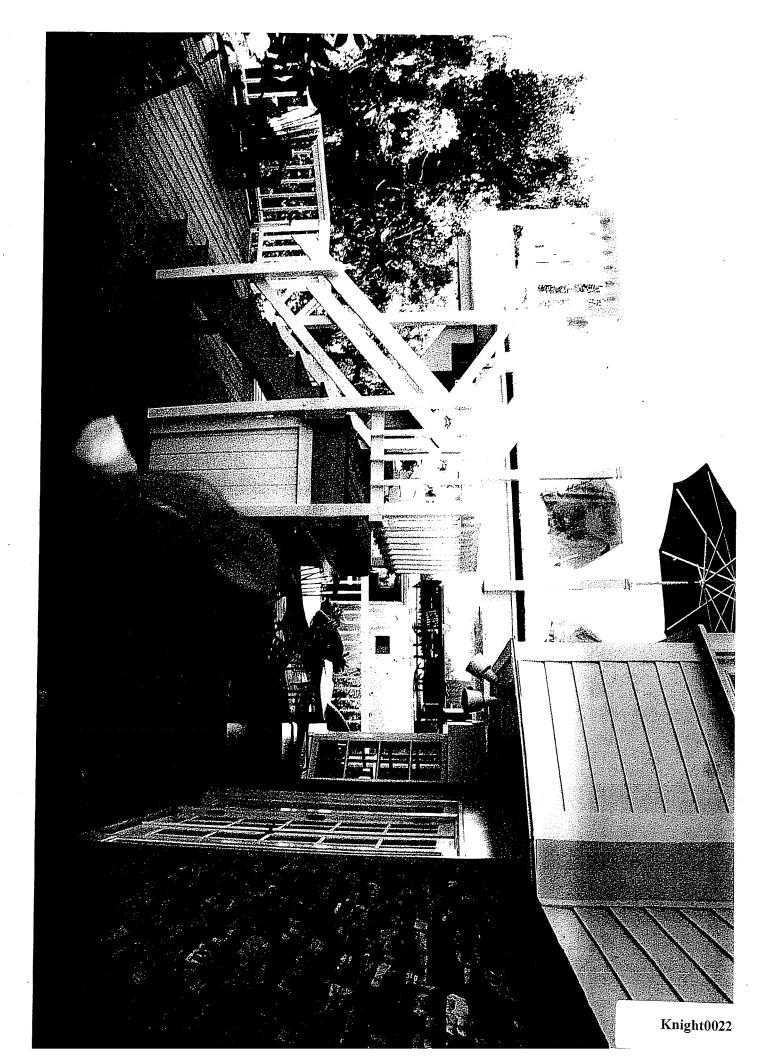
# EXHIBIT 2

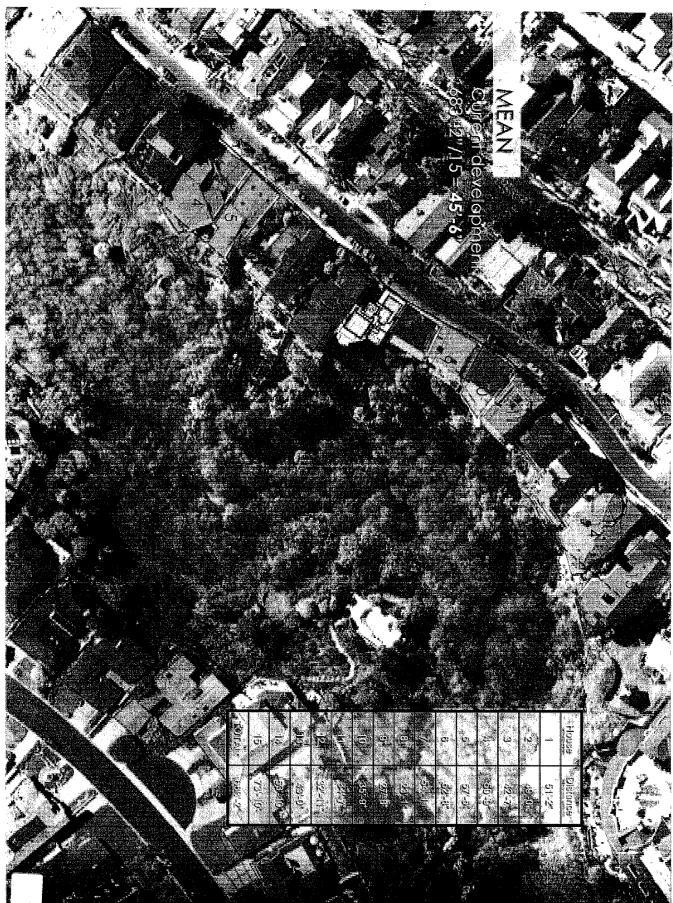


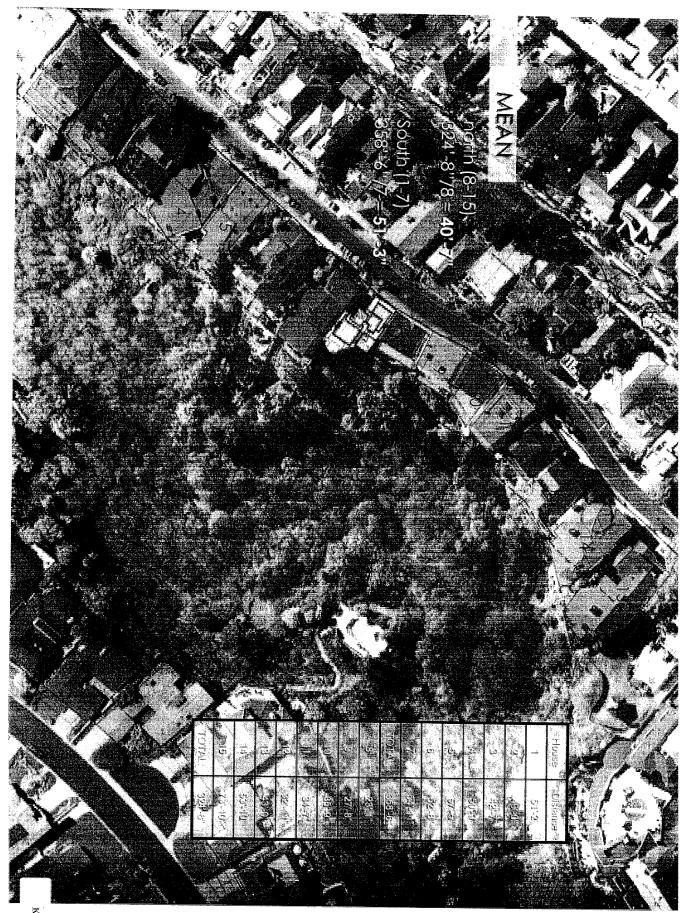






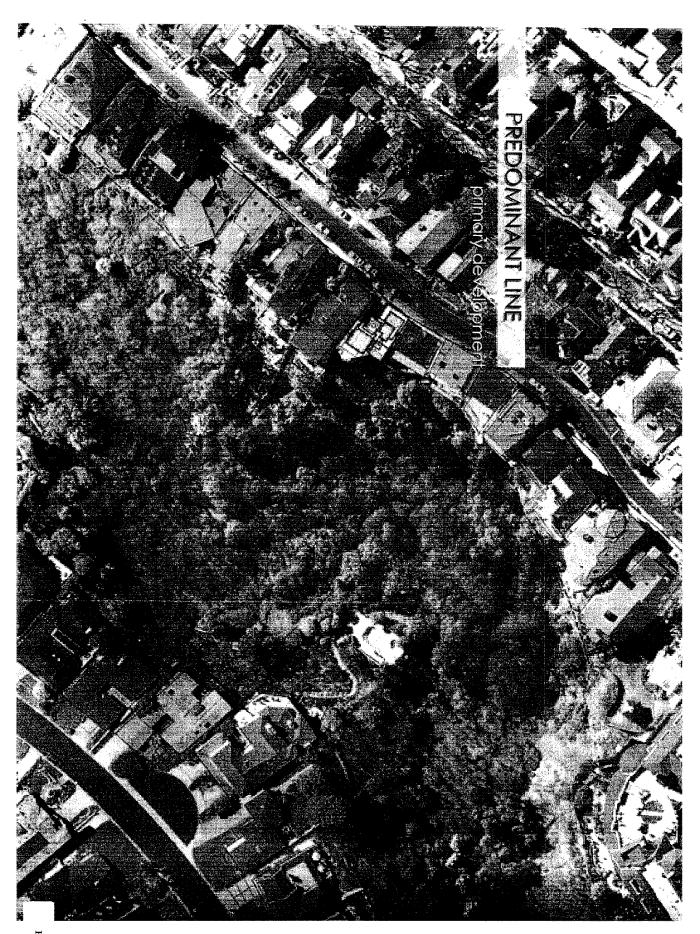


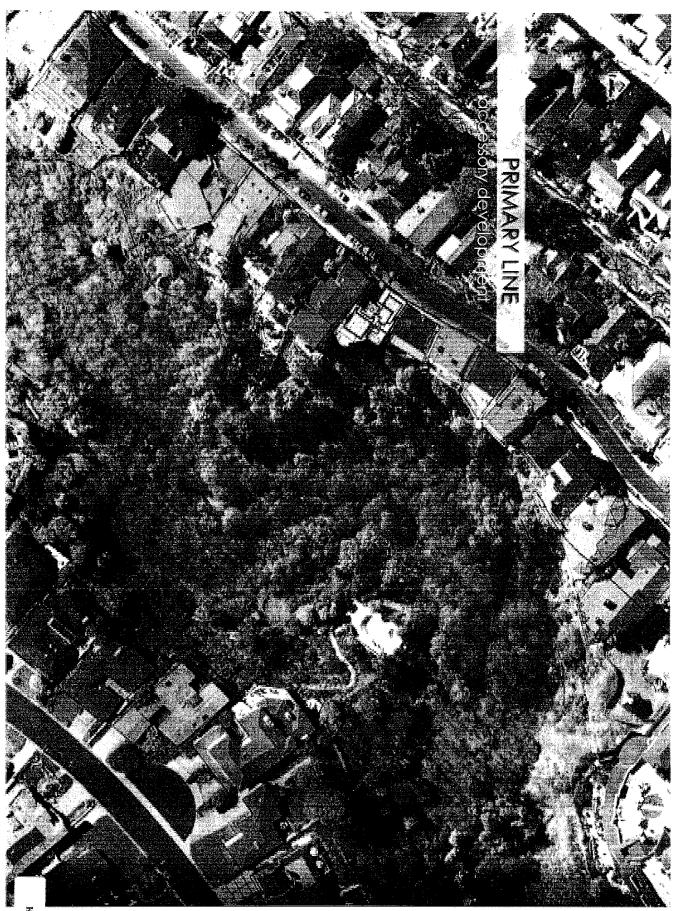














### **Appeal Application**

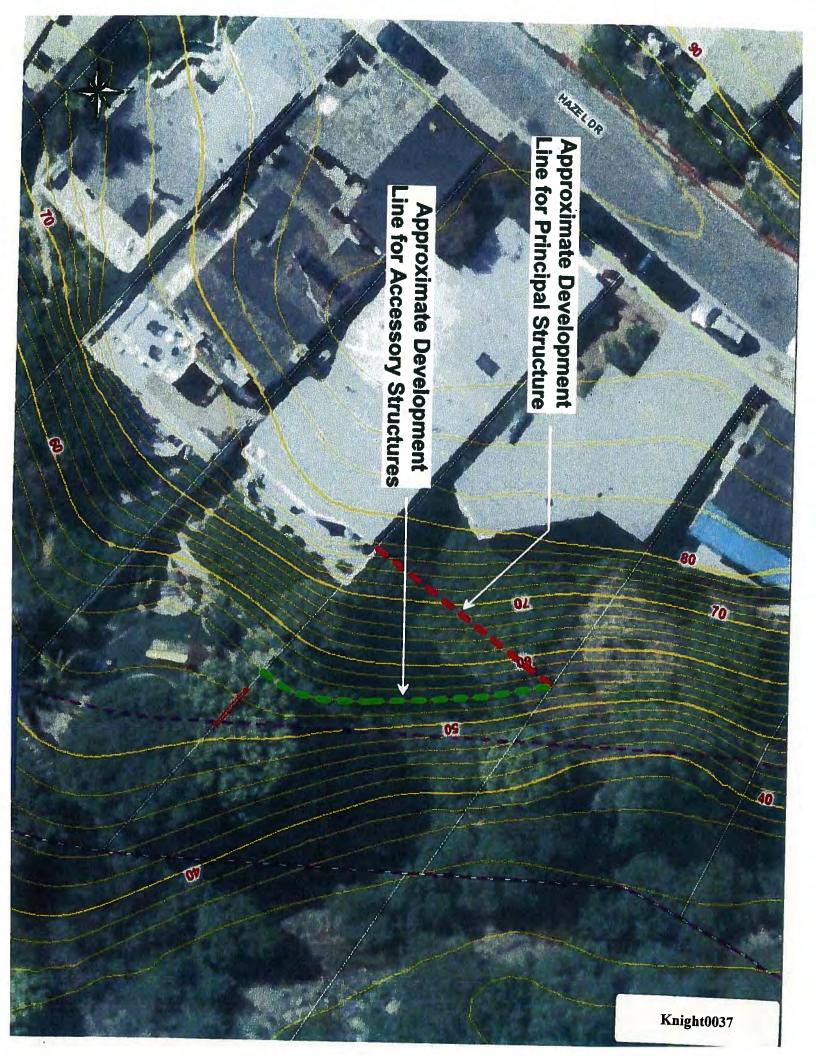
Community Development Department Planning Division 3300 Newport Boulevard, Newport Beach, CA 92663 (949)644-3204 Telephone I (949)644-3229 Facsimile www.newportbeachca.gov

For Office Use Only			
Date Appeal Filed:			
Fee Received:			
Received by:			

LIFORM	(949)644-3204 Telephone I (9 www.newportbeachca.gov	949)644-3229 Facsimile	Received by:
Application to ap	peal the decision of the:	<ul><li>☐ Zoning Administrator</li><li>☐ Planning Director</li><li>☐ Hearing Officer</li></ul>	
Appellant Informa		_	
Name(s):	Diane Knia	ht	
Address:		Drive	
City/State/Z	ip: Corona Del	Mar, CA	92625
Phone. 7/4	4.3370288 Fax: 9	4 9 5 1 5 4608 Email: _	92625 diane Cline-up.com
Appealing Applica	ation Regarding:		•
Name of App	plicant: Diane Knia	ht Date of Decision	on: <u>2-15-</u> /3
Project No. (	(PA): PH2013-043	Activity No.:	
	: 312 Hazel	Dr CDM C	CA
Description:	Joining appeal	- with Mr ou	- (316 Hazel Dr)
•			
Reason(s) for App	eal (attach a separate shee	et if necessary):	
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			/
Along with applica	ition, please submit the fo	ollowing:	
Twelve (12) 11x	17 sets of the project plans		
excluding interve	ening right-of-ways and wat	erways, of the subject site.	
Signature of Appel	lant: Dam 7	Nuish Date:	2-28-13

#### Knight Appeal

"Staff's determination of the predominant lines of existing development is arbitrary, unnecessarily restrictive, and contrary to the previously established predominant lines of existing development. Among other things, the development setback established by the Planning Director: (1) is inconsistent with the definition of "predominant line of development" adopted by the City; (2) is inconsistent with the predominant line of development previously applied to the property; (3) deprives the property owner of rights enjoyed by adjoining property owners; and (4) arbitrarily restricts development of the Knight property based solely on the size of a single adjacent structure."



#### CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071



### W19g

Filed:

180th Day:

12/19/12 6/16/13

Staff:

6/16/13 L. Roman-LB

Staff Report:

man-LB 1/17/13

Hearing Date:

2/6/13

#### STAFF REPORT: REGULAR CALENDAR

Application No.:

5-12-314

Applicant:

Kim and Karen Markuson

**Project Location:** 

168 West Avenida San Antonio, San Clemente,

Orange County

**Project Description:** 

Demolition of an existing 1,268 sq. ft. single story

residence with attached 262 sq. ft. garage and rear wood deck and construction of a new 1,922 sq. ft. two-story, single family residence with a 290 sq. ft. second story balcony deck, attached 390 sq. ft. garage and 300 sq. ft. basement level, retaining walls, landscaping, and 230 cu.

yds. of grading on a canyon lot

Staff Recommendation:

Approval with conditions.

#### SUMMARY OF STAFF RECOMMENDATION

The subject application requests approval for demolition of an existing 1,268 sq. ft. one story single family residence with attached 400 sq. ft. garage and rear wood deck and construction of a new two-story, 25' high, 1,922 sq. ft. two-story, single family residence with a 290 sq. ft. second story balcony deck, plus an attached 390 sq. ft. garage and 300 sq. ft. basement level, deepened footing foundation, retaining walls, fencing, and landscaping (Exhibit #2). Grading will consist of approximately 230 cu. yds. of cut to create the proposed basement storage level.

The certified LUP identifies three canyon setback choices which are to be selected based upon 'site characteristics'. There are seven canyons identified in the LUP and these setback choices exist because conditions from canyon to canyon, and within each canyon, are highly variable. Each canyon has a different shape, width and depth. The degree of existing disturbance within each canyon is also different. The land uses, density and intensity of development also vary. Public views of the canyons vary from point to point. The lots along and in these canyons vary with regard to lot size and shape. The topography of each lot can be highly variable, where in some cases there are canyon-top areas to site structures, there are other lots comprised mostly of canyon slope and canyon bottom. The pattern of existing development along the canyon changes from place to place. Another site characteristic that changes is presence or absence of native vegetation and/or a stream on the lot. Considering these site characteristics, a setback must be chosen that achieves habitat protection and enhancement, minimizes visual impacts and landform alteration, and avoids cumulative adverse impacts of the encroachment of structures into the canyon. Finally, sometimes equity is a consideration (i.e. size of development footprint available under each setback scenario compared with adjacent development) and a stringline approach to siting is adopted for particular projects so long as the stringline setback doesn't impact other coastal resources (i.e., geologic stability, habitat protection, etc.).

A coastal canyon setback utilizing option "a" in the City's LUP Chapter 3, Section 302 G, policy VII.15, would considerably minimize the site's buildable area after consideration of all other setbacks. The canyon edge (i.e., uppermost break in slope) was identified at approximately the 149' contour line by staff geologist Dr. Mark Johnsson on a site visit in March 2012. The existing structure is setback approximately 10' from the canyon edge. Setback option "a" would require a minimum 15' setback from the canyon edge for the new development. The existing homes along this segment of West Avenida San Antonio are roughly in alignment with one another on the canyon side of the lot. If the 15' setback from canyon edge was used in this case, the new residence would be further landward than all of the other homes along this segment. Thus, it would not be consistent with the existing pattern of development.

While there is a mixture of native and non-native vegetation on the subject site, vegetation on the lot is predominately ornamental along the top of canyon including fruit trees. As there is no riparian vegetation or a discernible line of coastal sage scrub vegetation, setback option "b" is not useful in this case.

The proposed project should be sufficiently set back to be consistent with the pattern of development in the surrounding area, to protect habitat and avoid frustration of future canyon habitat enhancement efforts by avoiding encroachment into the canyon (both individually and cumulatively). The applicant has designed the project to meet the stringline setback; setback option "c" of the certified LUP. Staff agrees that the use of a stringline setback would adequately protect coastal resources. However, the stringline was not correctly drawn on the submitted plans. A correctly applied stringline which is a line "drawn between the nearest corners of the adjacent structures" would result in a loss of approximately 4' of buildable area between the front and rear setbacks on the property resulting in approximately 42' depth of lot of buildable area. The applicant has already received a variance from the City to exceed the front yard setback. No such variance exists for canyon setback. The correctly drawn stringline setback would further restrict the size of the development footprint compared with adjacent

pattern of development with no significant benefit of increased protection of coastal resources. Therefore, considering the specific site characteristics, and the fact that the applicant proposes to remove existing non-conforming development in the canyon, and to improve the canyon habitat by removing non-natives and planting natives, staff recommends that the proposed new residential structure not encroach further toward the coastal canyon than the existing pre-Coastal Act residential structure. The existing single family residence mimics the stringline setback, only protruding 2' past the stringline on a 14' long wall along the southern corner facing the canyon and is compatible with the surrounding pattern of development. Special Condition #1 requires the applicant to submit revised plans to pull the proposed structure back a few feet from the canyon edge so that the setback of the new structure on the canyonward side of the lot maintains the same footprint as the existing pre-Coastal Act residence ensuring the new structure does not encroach further into the canyon. Furthermore, the applicant proposes, and Special Condition #1 ensures, the removal of unpermitted development in the canyon to protect habitat and avoid frustration of future canyon habitat enhancement efforts by avoiding encroachment into the canyon.

#### Landscaping

San Clemente's certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons. Rare or endangered species have been documented to exist within the relatively undisturbed Marblehead coastal canyons of San Clemente. However, the City has designated all coastal canyons, including Los Lobos Marinos Canyon, as environmentally sensitive habitat areas (ESHA), as depicted in Exhibit #4. The coastal canyons act as open space and potential wildlife habitat, as well as corridors for native fauna. Decreases in the amount of native vegetation due to displacement by non-native vegetation have resulted in cumulative adverse impacts upon the habitat value of the canyons. As such, the quality of canyon habitat must be assessed on a site-by-site basis.

The canyon adjacent to the subject site is considered somewhat degraded due to previous grading (cut/fill) forming terraces on the canyon face and the presence of both native and non-native plant species. No portion of the area on the subject site that is proposed to be graded or otherwise developed with structures contains resources that rise to the level of ESHA. However, to decrease the potential for canyon instability, deep-rooted, low water use plants, preferably native to coastal Orange County should be selected for general landscaping purposes in order to minimize irrigation requirements and saturation of underlying soils. Low water use, drought tolerant, native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the canyon slope. Drought resistant plantings and minimal irrigation encourage root penetration that increases slope stability. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" (a.k.a. WUCOLS) prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf

Additionally, since the proposed development is adjacent to a coastal canyon, designated as ESHA by the City, the the protection and enhancement of habitat values is sought, and therefore the placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants

#### CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071

W 4a

Filed: 49th Day:

October 28, 2010 December 16, 2010

180th Day: Staff: August 20, 2007 Fernie Sy-LB

Staff Report: Hearing Date:

December 22, 2010 January 12-14, 2011

Commission Action:

### STAFF REPORT: CONSENT CALENDAR

**APPLICATION NUMBER:** 

5-10-254

**APPLICANTS:** 

Sean & Julie Pence

AGENT:

Eric Aust

PROJECT LOCATION:

3 Canal Circle, City of Newport Beach (County of Orange)

**PROJECT DESCRIPTION:** Remodel and addition of an existing two-story, 2,454 square foot single-family residence with an attached 484 square foot two-car garage located on a water front parcel (Semeniuk Slough). Post project the two-story, single-family residence will be 2,980 square feet with an attached 451 square foot two-car garage. No grading is proposed

#### SUMMARY OF STAFF RECOMMENDATION:

The applicants are proposing the remodel and addition of an existing two-story single-family residence located on a water front parcel. The major issue of this staff report concerns waterfront development that could be affected by flooding and erosion during extreme storm events and development adjacent to a wetland (Semeniuk Slough). Typically in this area of Newport Beach, stringline is used in order to avoid encroachment of development on the slough. In this case, portions of the proposed additions do not adhere to the "accessory structure stringline" and the "principal structure stringline". However, impacts caused by these encroachments and the condition of existing development must also be considered. Significant portions of the existing "principal structure" and "accessory structure" already encroach further toward the slough and past the applicable stringlines. However, the proposed "structural" and accessory" additions do not encroach further toward the slough than the existing development. So while portions of the proposed additions do not adhere to the applicable stringlines, the project is still compatible to its surroundings in that they do not encroach any more toward the slough than existing development. Each development is reviewed on a case by case basis and while in this area stringline is typically used to prohibit encroachment toward the slough, in this instance the siting of the existing development already establishes the development pattern and the proposed project would not exacerbate an existing non-conformity. Thus, the development as proposed is consistent with the character of the surrounding area.

Commission staff is recommending <u>APPROVAL</u> of the proposed project subject to <u>ELEVEN (11)</u> <u>SPECIAL CONDITIONS</u> requiring: 1) an assumption-of-risk agreement; 2) no future shoreline protective device agreement; 3) future development agreement; 4) submittal of foundation plans; 5) conformance with submitted project plans identifying the unpermitted rear patio deck and planter, steps leading to the slough, a small boat dock, and a large boat dock located in the ACOE property; 6) conformance with submitted construction staging area(s) and construction corridor(s) plans; 7) conformance with certain requirements related to the storage and management of construction debris and equipment; 8) conformance with drainage and run-off control plans; 9) submittal of revised landscape plans; 10) adherence to requirements for exterior lighting adjacent



#### AGENDA

# General Plan/LCP Implementation Committee April 15, 2009 3:30 p.m. City Council Chambers

1. Approve Action Minutes from March 25, 2009 Attachment No. 1

3:30-3:35pm

- 2. Draft Zoning Code Review
  - A. Adult Business Regulations, Section 20.60.020 Update from staff
  - B. Performance Guarantees (Revised), Section 20.68.060 Provide comments on revised regulations (attached)
  - C. Recovery of Costs (Revised), Section 20.82.060 Provide comments on revised regulations (attached)
  - D. Environmental Study Areas Update from staff
  - E. Canyon Development Standards Review revised standards and provide comments on regulations and exhibits (attached)
  - F. Revised Zoning Code Schedule Provide comments to staff on revised schedule.(attached)

Attachment No. 2

3:35-5:45pm

3. Items for Future Agenda

5:45-5:50pm

4. Public Comments on non-agenda items

5:50-6:00pm

5. Adjourn to April 29, 2009, 3:30 p.m.

#### Attachments:

- 1. Draft action minutes from March 25, 2009
- 2. Draft Zoning Code Review support material



#### NPB-MAJ-1-04 City of Newport Beach LUP Update

existing development in the subject area. Accessory improvements are subject to analogous restrictions through Suggested Modifications 129 and 130. It is made clear that all of these bluff setbacks shall be increased where necessary to ensure safety and stability of the development. Additionally, Suggested Modification 133 requires swimming pools located on bluff properties to incorporate leak prevention and detection measures.

Suggested Modification 122 clarifies that only private development on Ocean Boulevard determined to be consistent with the predominant line of development and necessary public improvements will be allowed on bluff faces. Any further alteration of bluff faces will be prohibited. The Commission makes these modifications to ensure stability and protect coastal views, while recognizing past alteration and development patterns in the City. It is not necessary or appropriate to distinguish between altered and unaltered bluffs or to say that bluffs are no longer considered "coastal bluffs" because they have been significantly graded.

As modified, the policies allow development to occur in much the same manner it currently does in infill areas. Suggested Modification 132 maintains approved bluff edge setbacks for the coastal bluffs within the planned communities of Castaways, Eastbluff, Park Newport, Newporter North (Harbor Cove), and Bayview Landing. Suggested Modification 120 requires more stringent public access/setback requirements for new planned communities.

Development that currently exists on the bluff face on Ocean Boulevard will be allowed to continue in accordance with the predominant line of development if deemed geologically feasible, as addressed in Suggested Modification 131. Similarly, Suggested Modification 125 specifies that the bluffs along Bayside Drive that have been cut and filled by the Irvine Terrace and Promontory Point development will be subject to the setback restrictions established for bluffs not subject to marine erosion. As such, the "predominant line of development" standard will apply there.

Coastal canyon development will be regulated in much the same way. Where there was previously no setback for development on canyon lots, there is now a requirement to comply with the "predominant line of development." Suggested Modification 134 provides this new standard for development along Buck Gully and Morning Canyon. The addition of a canyon setback regulation in these areas will prevent significant landform alteration and limit encroachment into natural habitats.

As modified, more conservative setback standards would be applied to potentially hazardous lots, thereby providing better assurance of long-term stability. When development is properly sited, the need for construction of protective devices to support new development is avoided. Therefore, the Suggested Modifications ensure conformance with Sections 30253 and 30251 of the Coastal Act.

Page: 80

Go. gle

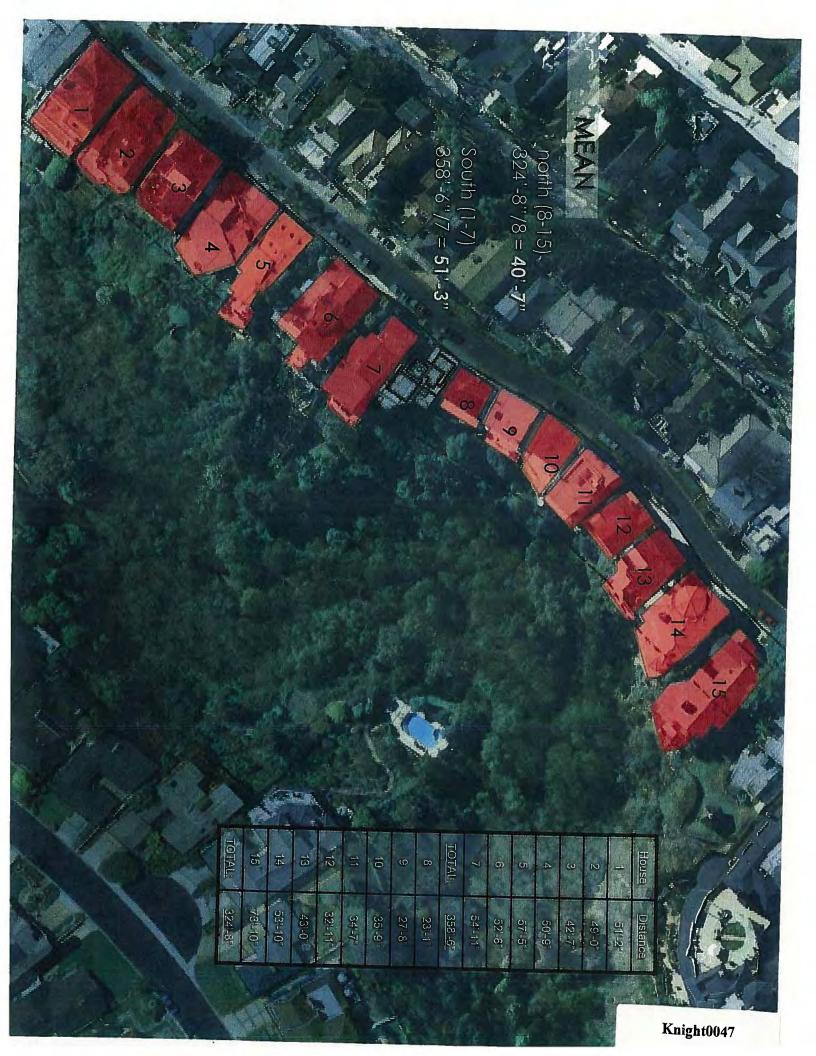
To see all the details that are visible on the screen, use the "Print" link next to the map.

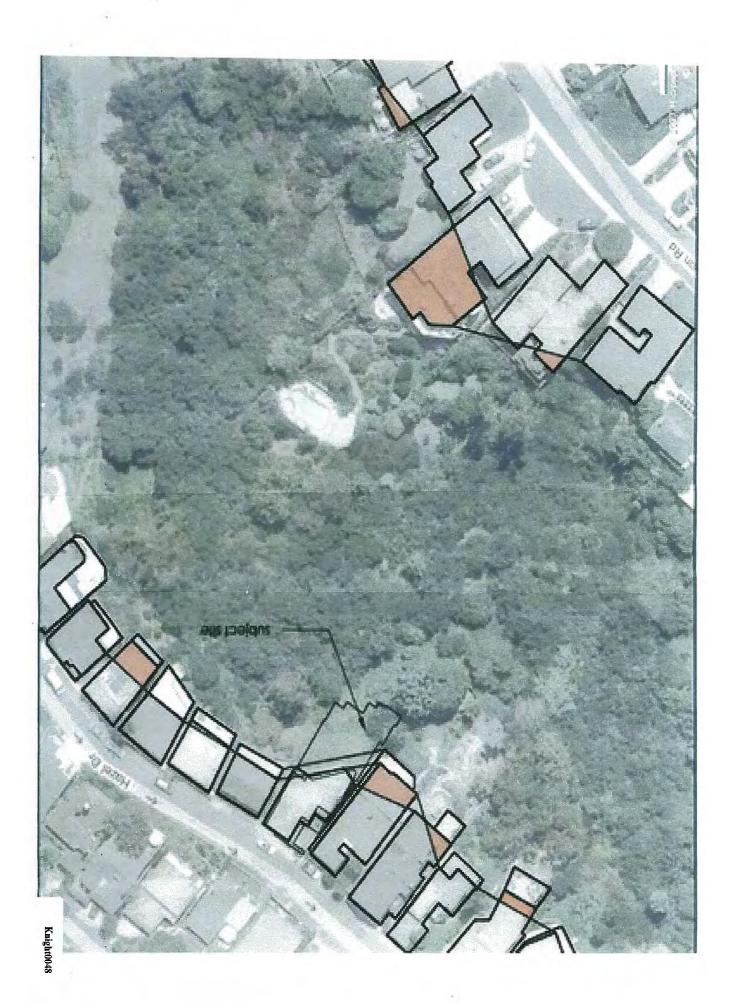


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To see all the details that are visible on the screen, use the "Print" link next to the map.







----Original Message---From: Alford, Patrick
To: Rosenthal, Deborah M.
Sent: Fri Nov 02 11:05:52 2007

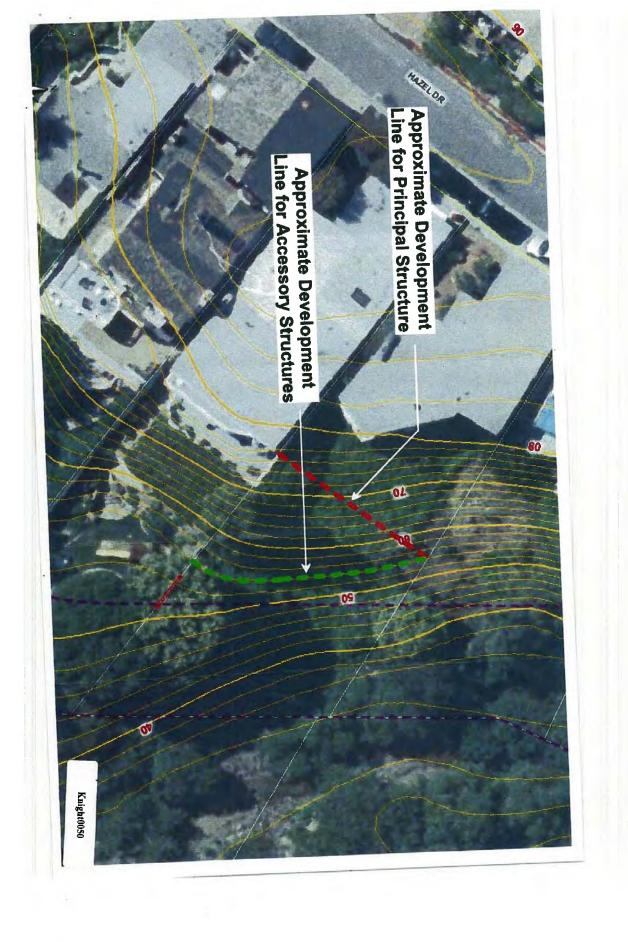
Subject: 312 Hazel

<<Glacier Bkgrd.jpg>> <<li>line of development.jpg>> Deborah,

David is prepared to find that if the new principal structure does not extend beyond principal structure located at 308 Hazel Drive and steps down the slope as depicted in the simulation in your October 19, 2007 letter, the development will be consistent with Criterion No. 7. As for the proposed accessory structures, David believes that if these improvements are terraced as depicted in the simulation and do not extend further down the slope than the first terraced area on the 308 Hazel Drive property, which is within the 54-foot contour line, the development will be consistent with Criterion No. 7: The attached exhibit depicts the approximate line of development for the principal structure and for accessory structures.

If your clients are in agreement, we will send you a letter containing this interpretation.

Patrick J. Alford Senior Planner City of Newport Beach Planning Department 3300 Newport Blvd. Newport Beach, CA 92663 (949) 644-3235 (Voice) (949) 644-3229 (Fax)





CITY OF NEWPORT BEACHECETTEL

January 10, 2008

Deborah M. Rosenthal Bingham McCutchen LLP 600 Anton Boulevard | Suite 1800 Costa Mesa. CA 92626

RE: 312 Hazel Drive

Dear Ms. Rosenthal,

Thank you for you assistance in establishing development parameters for the proposed development at 312 Hazel Drive. As you know, Ordinance No. 2007-3 established procedures for the implementation of the General Plan during the interim period while the Zoning Code and other ordinances and regulations are being updated. Criterion No. 7 states:

Site planning should follow the basic principle of designing development to fit the features of the site rather than altering the site to fit the design of the development. Whenever possible, altering natural features such as cliffs, canyons, bluffs, significant rock outcroppings, natural vegetation should be avoided or the extent of alternation minimized. Adequate buffers should be provided to protect significant or rare biological resources.

After reviewing your exhibits, I have concluded that if the new principal structure does not extend beyond principal structure located at 308 Hazel Drive and steps down the slope as depicted in the simulation in your October 19, 2007 letter, the development will be consistent with Criterion No. 7. As for the proposed accessory structures, if these improvements are terraced as depicted in the simulation and do not extend further down the slope than the first terraced area on the 308 Hazel Drive property, which is within the 54-foot contour line, the development will be consistent with Criterion No. 7. The attached exhibit depicts the approximate line of development for the principal structure and for accessory structures.

Please note that is for purposes of interpreting Criterion No. 7 of Ordinance No. 2007-3 only. This interim ordinance will expire when the new Zoning Code is adopted. New building permit applications will have to comply with the property development regulations contained in the new Zoning Code. At this time, it is estimated that the new Zoning Code will be adopted sometime around mid-year 2008.

3300 Newport Boulevard · Post Office Box 1768 · Newport Beach, California 92658-8915 Telephone: (949) 644-3200 · Fax: (949) 644-3229 · www.city.newport-beach.ca.us

312 Hazel Drive January 10, 2008 Page 2 of 2

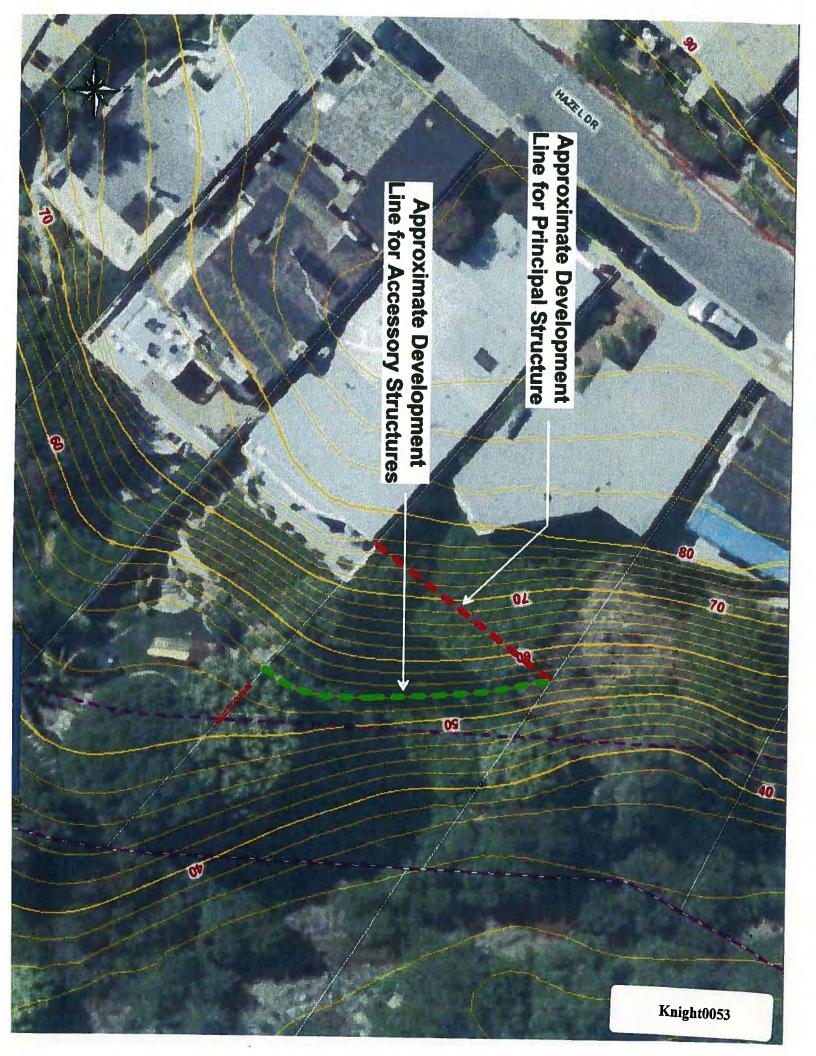
This interpretation was prompted by new direction provided to staff from members of the General Plan/LCP Implementation Committee. It involved policy issues other than those raised in your client's appeal. Therefore, I believe that it is appropriate to refund the \$600.00 filing fee, should your client choose to withdraw the appeal.

As to your request regarding compliance with other City requirements, our ability to perform an analysis was limited as we were only given a partial set of conceptual plans that were not drawn to scale. However, we did route the conceptual plans to other City departments for comments. Copies of their comments are attached and I hope that you find them useful.

Sincerely,

David Lepo

Planning Director





### Newport Beach Fire Department Fire Prevention Division 3300 Newport Blvd. Newport Beach, CA 92663 (949) 644-3106

## Planning Commission Project Review Conditions for Approval

DATE:

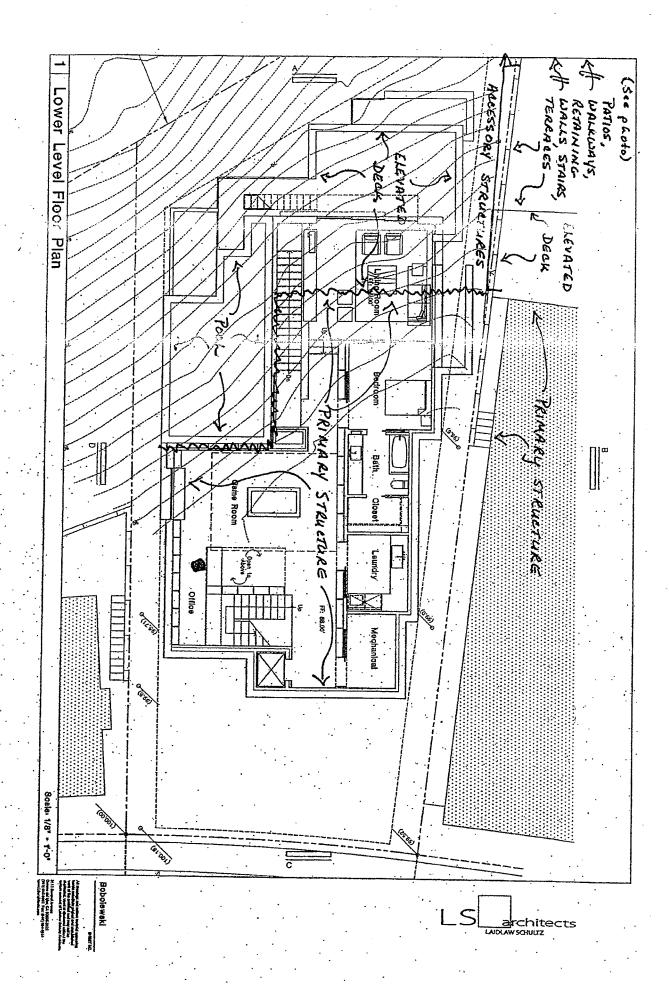
December 13, 2007

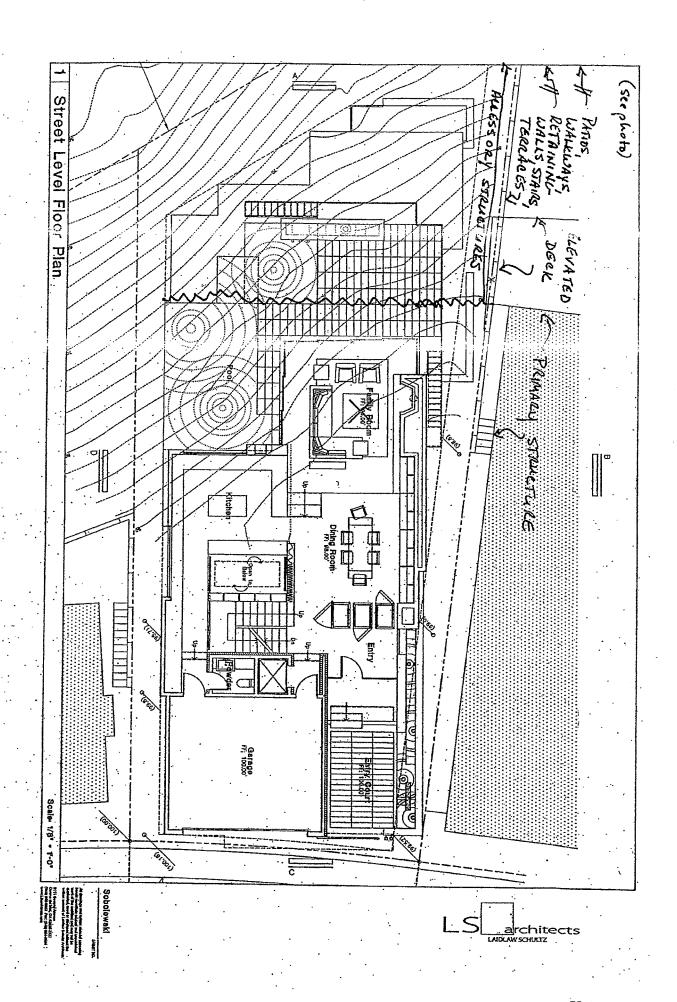
PROJECT LOCATION:

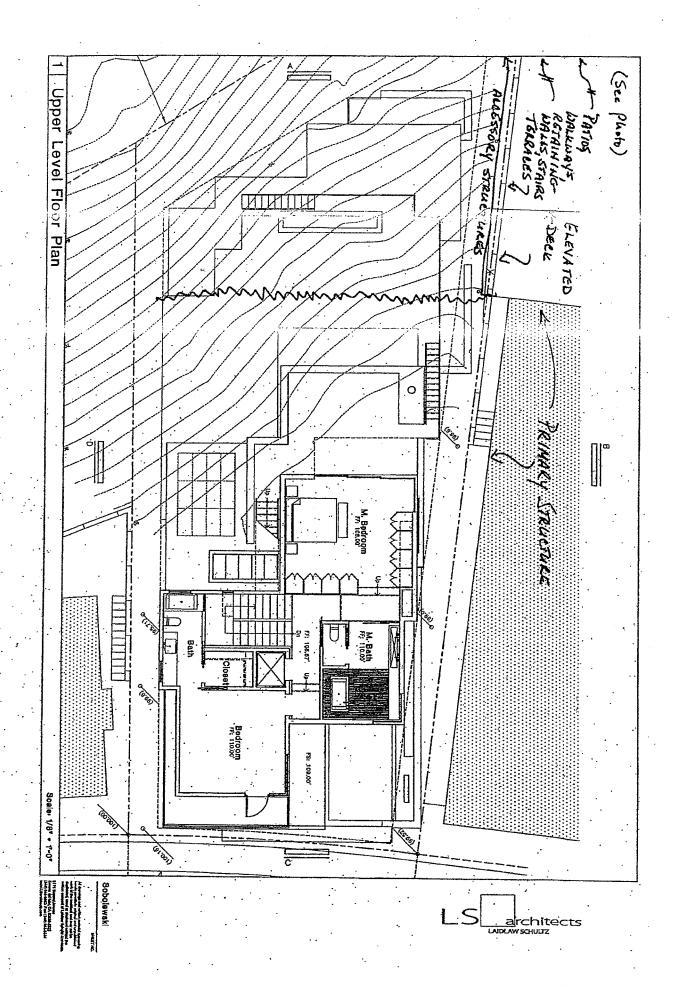
312 Hazel Drive

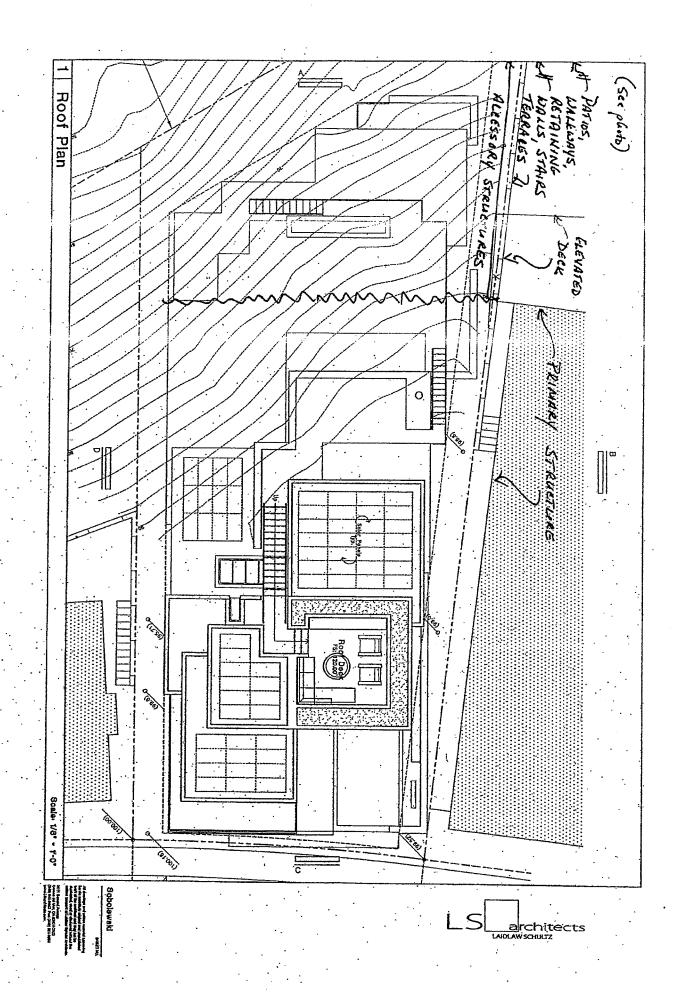
### Conditions:

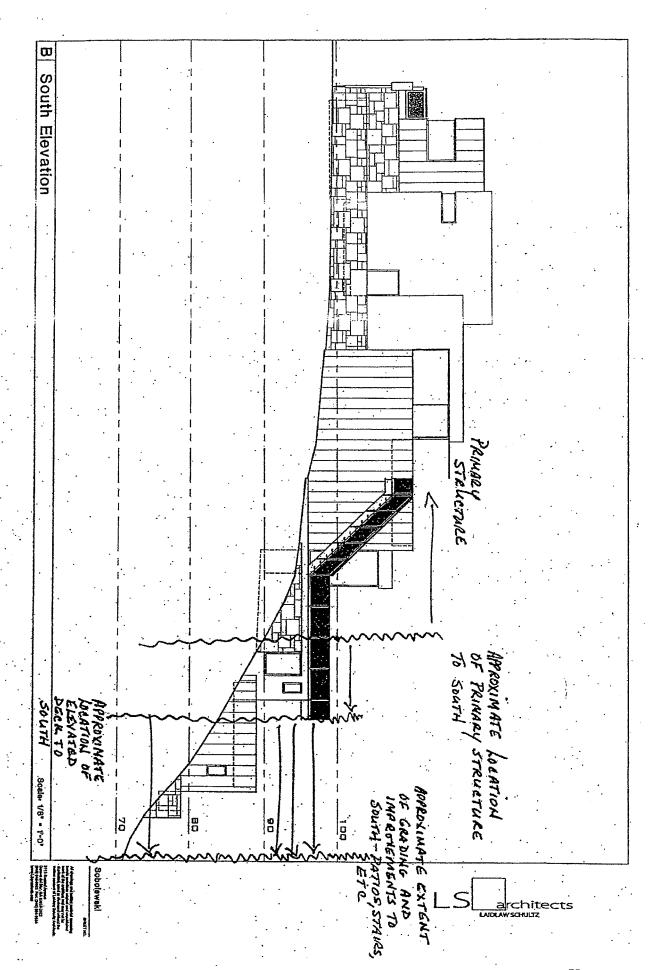
1. Building is located adjacent a special fire protection area. Property will require a fuel modification plan and meet construction requirements in accordance with amended Chapter 7A of the 2007 California Building Code.

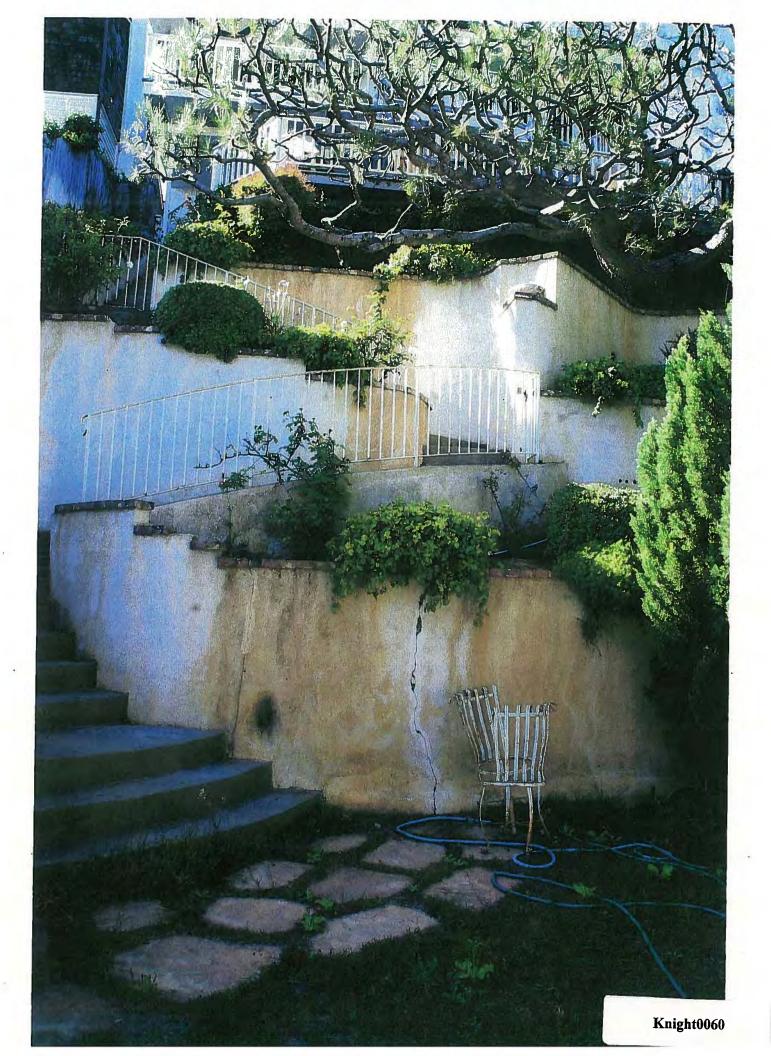




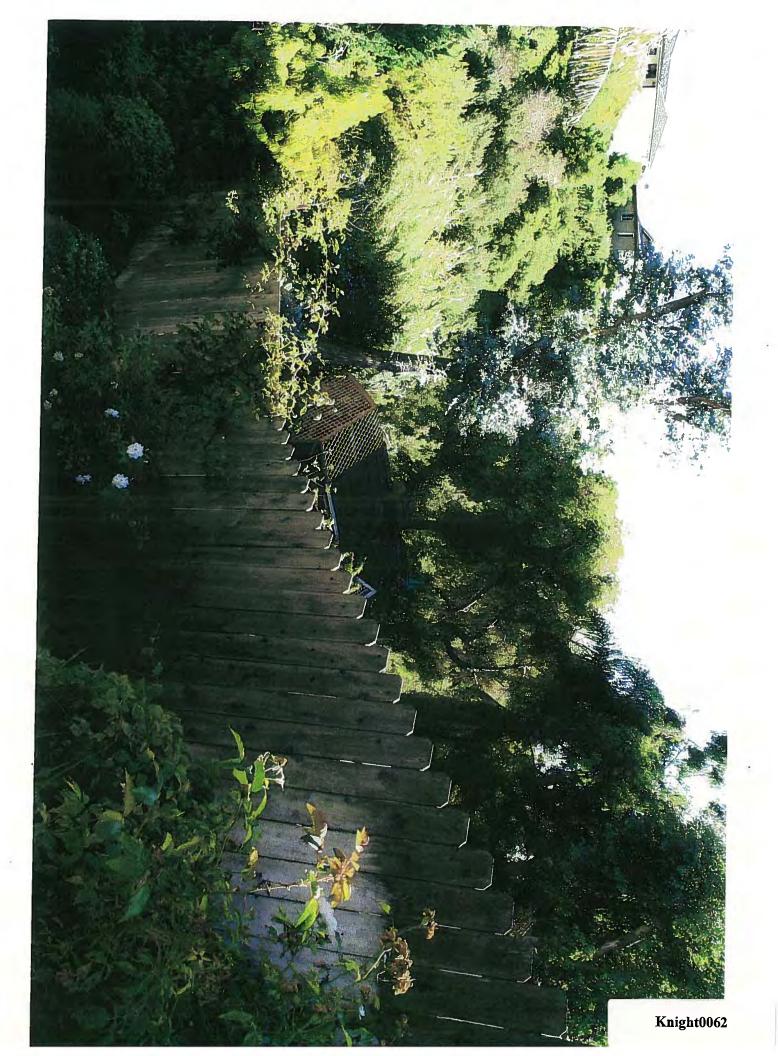












Correspondence Item No. 4a

#### Burns, Marlene

Knight Residence and Ou Residence

PA2013-044 and PA2013-043

From: Brandt, Kim

Sent: Wednesday, April 03, 2013 10:53 AM

To: Burns, Marlene

Subject: FW: Knight Appeal - Planning Commission Agenda Item 4

FYI.

Kím

From: Deborah Rosenthal [mailto:DRosenthal@sheppardmullin.com]

Sent: Wednesday, April 03, 2013 10:51 AM

To: Brandt, Kim

Cc: Diane Knight; Cathy Richardson; Campbell, James; Nova, Makana

Subject: Knight Appeal - Planning Commission Agenda Item 4

Kim:

I represent Diane Knight, whose appeal of a stringline determination is Item 4 on the Planning Commission agenda tonight. As we discussed, my son was in a bicycle accident last night and requires surgery this afternoon, which will make it impossible for me to attend tonight's hearing. I therefore requested a 2-week continuance, to the next Planning Commission meeting on April 18, 2013. Both Ms. Knight and Dr. Ou are in agreement with this request.

This email confirms that we have agreed to continue the hearing on Item 4 to April 18, 2013. No one will appear this evening on behalf of the appellants.

Thank you for your understanding.

#### **Deborah Rosenthal**

Costa Mesa | x12821

**SheppardMullin** 

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Sheppard Mullin Richter & Hampton LLP 650 Town Center Drive, 4th Floor Costa Mesa, CA 92626-1993 714.513.5100 main 714.513.5130 main (ax www.sheppardmullin.com

714.424.2821 direct drosenthal@sheppardmullin.com

Fite Number: 35HF-176794

PECEIVED BY
COMMUNITY

MAR 21 2013

OF NEWPORT BY

March 19, 2013

#### VIA E-MAIL AND FEDEX

Planning Commission City of Newport Beach 3300 Newport Boulevard Newport Beach, CA 92663

Re: Appeal of Stringline Determination for 312 Hazel Drive, Corona del Mar (Knight Appeal)

#### Dear Planning Commissioners:

On behalf of Diane Knight, this letter appeals the Stringline Determination for 312 Hazel Drive issued by the Planning Director on February 15, 2013. The lot under appeal (the "Lot") is located on lower Buck Guily south of Pacific Coast Highway in Corona del Mar. Knight0001 Under General Plan Policy NR 23.6 and Coastal Land Use Plan Policy 4.4.3-18, the City is required to establish a "predominant line of existing development" for new structures on Buck Gully. The Planning Director previously established primary and accessory "lines of development" for this Lot on January 10, 2008; this appeal requests reinstatement of those lines in accordance with approved building plans.

#### Background

The property was purchased by the Knight-Sobelewski family ("Knight") in 2003. In June 2007, the Planning Department imposed a diagonal Stringline at or about the rear setback of the existing house, based on the corners of the immediately adjacent structures. The family appealed this decision to the Planning Commission ("2007 Appeal"). A copy of the 2007 Appeal is attached as Knight0002-34. Before the hearing, the Planning Director identified a primary "line of development" at the same rear setback as the adjacent house to the south, and an accessory "line of development" on a diagonal along the 54' contour. A copy of the Planning Director's 2008 Determination is attached as Knight0049-59.

The Knights accepted the Planning Director Determination, withdrew the 2007 Appeal and completed building plans. A building permit was issued for a new, larger home (the "Project") in 2009, but expired in 2011 after Mr. Sobelewski became terminally ill. He died in July 2012 and Ms. Knight has listed the home for sale. Plans for the home are attached as Knight0010-15 (Exhibit 1 to the 2007 Appeal). Potential buyers have requested reinstatement of the building permit as a condition of purchase.

Plenning Commission March 19, 2013 Page 2

In the original 2007 Appeal, the Knights requested establishment of a "predominant line of existing development" for Buck Gully in accordance with the General Plan and CLUP. They identified two possible predominant lines, based on the rear setbacks of a representative block of surrounding structures. The first "predominant line" was a primary setback based on the rear line of the 10 adjacent homes on lots with similar developable acreage, excluding lots with severe topography not present on the Lot. The alternate predominant line was a single line based on the rear line of all statutorily-defined development, including accessory structures, of the 15 adjacent homes. Both of the proposed lines attempted to avoid creating non-conforming structures. Using a structure-by-structure stringline, for instance, makes more than half of the existing homes non-conforming. A graphic study showing the effect of a stringline is attached as Knight0048.

At the same time, the City's General Plan/LCP Implementation Committee considered establishment of a predominant line of development along Buck Gully south of PCH. A map showing proposed 100' Development Areas along Buck Gully from the April 15, 2009 Committee Meeting is attached as Knight0042-43. The draft Committee Development Areas were similar, but somewhat larger than the Knight proposals for a predominant line. The Committee did not finalize a predominant line of development in 2009, but decided to defer adoption until preparation of the Implementation Plan.

In the absence of an adopted predominant line in 2007, the Planning Director determined primary and accessory development lines for the Lot that complied with all potential development setbacks. In making this Determination, the Planning Director also recognized site-specific factors affecting the Lot, including topography and a 32' or 120% variance in setbacks between the nearest points on adjacent structures. After consulting with the General Plan/LCP Implementation Committee, the Planning Director found the Project consistent with the site planning principles of Criterion No. 7 of Ordinance No. 2007-3 and the setback direction of the Committee. Knight0051-52.

Unfortunately, Mr. Sobelewski died before the home could be built. In response to an inquiry about reinstating the expired building permit in February 2013, the Planning Director applied the same diagonal Stringline challenged in the 2007 Appeal. The Stringline does not allow construction of the home approved in 2008 in reliance on the previous Planning Director Determination. This second appeal followed ("2013 Appeal"). Knight0035-37.

There have been no changes in the relevant sections of the General Plan, CLUP or Zoning Code since 2008 when the building permit was issued for 312 Hazel Drive. The "predominant line of existing development" policy was adopted by the City in 2005 and has not been modified since that time. The City and the Coastal Commission have both acknowledged on numerous occasions that the policy is intended to be applied in a flexible manner, with due regard for site-specific factors and development rights.

Ms. Knight cannot proceed with sale of her property unless the Planning Commission establishes a predominant line of development for the Lot. The line of development applied by the Planning Director in resolving the 2007 Appeal is consistent with existing policy and

Planning Commission March 19, 2013 Page 3

procedures, and will allow the sale to go forward. This 2013 Appeal should be granted and the previously-approved development lines shown at Knight0037 reinstated.

City Policies Require Application Of A Predominant Line of Development, Not A Stringline

General Plan Policy NR 23.6 (Canyon Development Standards) and CLUP Policy 4.4.3-18 (Natural Landform Protection) state:

Establish canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon. Do not permit development to extend beyond the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property. Establish development stringlines for principle structures and accessory improvements. (Emphasis added.)

Under the express language of the Canyon Development Policies, therefore, the City is required to establish and apply canyon setbacks based on the <u>predominant line of development</u>. A stringline is not a substitute for establishment of a predominant line, but a method of preventing construction beyond the predominant line.

The required setback is based on the predominant line of development for a representative group of homes along lower Hazel Drive. The Glossary defines "predominant line of development" as:

The most common or representative distance from a specified group of structures to a specified point or line (e.g. topographic line or geographic feature). For example, the predominant line of development for a block of homes on a coastal bluff (a specified group of structures) could be determined by calculating the median distance (a representative distance) these structures are from the bluff edge (a specified line).

The Glossary defines "development" as "the placement or erection of any solid material or structure; ... construction, reconstruction, demolition, or alteration of the size of any structure ...' The City typically considers development to include any structure requiring a building permit in the Coastal Zone, including decks, pools and retaining walls.

At the time of adoption, Coastal Commission Staff explained that the purpose of Policy 4,4,3 was to impose an overall "predominant line of development" along blocks of homes. After discussing application of the new predominant line of development standard to costal bluffs in suggested modifications to the 2005 CLUP Update, the Staff Report stated:

Coastal canyon development will be regulated in much the same way. Where there was previously no setback for development on canyon lots, there is now a requirement to comply with the "predominant line of development." Suggested

### **Sheppard** Wullin

Planning Commission March 19, 2013 Page 4

Modification 134 provides this new standard for development along Buck Gully and Morning Canyon. The addition of a canyon setback regulation in these areas will prevent significant landform alternation and limit encroachment into natural habitats." Suggested Modifications, p. 80, NPB-MAJ-1-04, October 13, 2005 (Item Th 8d). An excerpt of the Coastal Commission Staff Report is attached as Knight0044.

The City accepted the Commission modifications, including Policy 4.4.3-18, in December 2005. In conversations with City Staff in 2007, they advised the intent of Policy was to allow flexibility in establishing setbacks in built-up areas like Hazel Drive on lower Buck Gully.

# The Approved Building Plans Are Consistent With Any Predominant Line of Development

This 2013 Appeal can be resolved by establishing an individual predominant line of development for the Knight Lot without affecting the entire block of homes. Staff concurs that this approach is allowed under the CLUP and consistent with City procedures. Ms. Knight proposes a predominant line that meets the following tests: it grants similar development rights to similar properties; it applies a standard that avoids creating non-conformities on existing lots to the extent possible; and it does not interfere with adoption of a predominant line for the entire block of homes in the future. The building plans previously approved by the Planning Director meet all of these tests.

The purpose of a predominant line of development is to control encroachment into natural areas, while respecting the rights of adjacent owners to use their property on an equitable basis. In this case, two aerial photographs are worth several thousand words. Two photographs of lower Hazel Drive, dated 3/5/2013, are attached as Knight0045-46; 0062. As clearly shown, "development" extends almost to the bottom of Buck Gully on a number of lots. The Knight Lot is tucked behind a much larger structure, blocking any views to the south. All but 4 lots extend farther into the Gully than the Knight Lot.

The General Plan/LCP Implementation Committee considered a 100' setback from the front property line as the predominant line of development, including both primary and accessory development in the same zone. Knight0042-43. This predominant line did not make any of the existing structures non-conforming, and would comfortably allow construction of the Knight Project, which extends 54'11' from the property line for the primary structure and less than 30' for decking and other accessory structures. As approved, the plans are consistent with the 100' setback line considered by the Committee.

In the 2007 Appeal, the City also considered information about existing setbacks submitted by the Knight family. All of the existing structures, both primary and accessory, were measured from their front property lines, and the size of lots analyzed. As shown on Knight0023-30 (Exhibits 4, 5, 6 and 7 to the 2007 Appeal), simple setback

Planning Commission March 19, 2013 Page 5

averaging made a high percentage of lots non-conforming. Even dropping out the lots constrained by topography made seven of the lots non-conforming. Factoring in the size of lots, together with topography, met the above standards, and minimized non-conformity. See Knight0031-32 (Exhibit 8 to the 2007 Appeal). The preferred predominant line incorporated accessory structures within the setback lines in accordance with the City's definition of "development" and the general approach of the Committee. See Knight0033-34 (Exhibit 9 to the 2007 Appeal). The Knight Project is consistent with either of these predominant lines.

The "line of development" determined by the Planning Director on the 2007 Appeal was even more restrictive than the above lines, thus ensuring consistency with any future adoption. The primary line was set at 54'11' or at the same setback as the neighboring house to the south. The accessory line was set at the limit of the first terraced area on the property to the south, which is at the 54-foot contour line. This Determination allowed the residence to extend into Buck Gully by the same distance as the residence at 308 Hazel Drive, but required accessory structures to pull back to the north. It also reflected the larger size of the Lot, which has more developable area than most other Hazel Drive lots.

# The Previously Approved Line Of Development for the Knight Lot Is Consistent With Precedent

In the absence of adopted predominant lines of development for Buck Gully and Morning Canyon, the City has used a modified stringline approach to ensure consistency with potential future predominant lines of development. For instance, of 16 stringline projects made available for review, four were approved before Policy 4.3.3-18 was adopted and another three were submitted at the same time as the Knight Project. Of the total 16 projects, stringlines were exceeded or modified for site-specific reasons in at least 12 cases. On some lots, both the primary and accessory structures appear to exceed the designated stringline. In other cases, the nearest structural corner is not used or the connection is unclear. City Staff has also worked with the Evening Canyon homeowners association, which applies its own slightly different stringlines to homes on the east side of Buck Gully. Aerial photographs of the 16 lots are available upon request.

Even in situations where a predominant line of development is not adopted, the Coastal Commission has applied stringlines flexibly to reflect existing development patterns, site characteristics and equity. At 3 Canal Circle in Newport Beach, for instance, the Coastal Commission explained that "each development is reviewed on a case-by-case basis and while in this area stringline is typically used to prohibit encroachment toward the [Semeniuk] slough, in this instance the siting of the existing development already established the development pattern and the proposed project would not exacerbate an existing non-conformity. Thus, the development as proposed is consistent with the character of the surrounding area." Staff Report, p. 1, #5-10-254, October 28, 2010 (Item W4a), attached as Knight0041. At 168 West Avenida San Antonio in San Clemente, the Commission rejected a stringline that "would further restrict the size of the development footprint compared with adjacent pattern of development

Planning Commission March 19, 2013 Page 6

with no significant benefit of increased protection of coastal resources. Staff Report, pp. 10-11, #5-12-314, December 19, 2012 (Item W19g), attached as Knight0038-40.

#### Conclusion

For all of the above reasons, Ms. Knight requests reinstatement of the development line for 312 Hazel Drive previously determined by the Planning Director in 2008, or adoption of the predominant line of development shown at Knight0033-34 (Exhibit 9 of the 2007 Appeal).

Very truly yours,

Deborah M. Rosenthal, AICP

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:408169837.2 Attachments

ÇÇ:

Ms. Diane Knight

Ms. Kimberly Brandt, AICP

Mr. James Campbell Ms. Makana Nova